

Part I: Administrative Legislation

Chapter 1

GENERAL PROVISIONS

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

ARTICLE I
Adoption of Code
[Adopted 5-20-1981 by L.L. No. 1-1981]

§ 1-1. Legislative intent.

The local laws, ordinances and resolutions of the Town of Elma referred to in § 1-2 of this local law shall be known collectively as the "Code of the Town of Elma," hereafter termed the "Code," and the various parts and sections of such local laws, ordinances and resolutions shall be distributed and designated as provided and set forth in § 1-2 of this local law.

§ 1-2. Distribution of local laws, ordinances and resolutions.

Derivation Table

(Sections providing for severability of provisions, repeal of conflicting legislation and effective dates which are covered by provisions of Chapter 1, Article I, or ordinance title sections which are not necessary in a codification having chapter and/or Article titles for the various ordinances and local laws included therein have been omitted from the Code, and such sections are indicated as "omitted" in the table which follows.)

New Number (chapter, title, article, section)	Old Number (source)	Adoption Date
Chapter 8, Environmental Commission	L.L. No. 1-1971	11-3-1971
§ 8-1	Section 1	
§ 8-2	Section 2	
§ 8-3	Section 3	
§ 8-4	Section 4	
§ 8-5	Section 5	
§ 8-6	Section 6	
§ 8-7	Section 7	
§ 8-8	Section 8	
Omitted	Section 9	
Chapter 10, Ethics Code of	Resolution	10-21-1970
§ 10-1	Section 1	
§ 10-2	§ 2	
§ 10-3	§ 3	
§ 10-4	§ 4	
§ 10-5	§ 5	
§ 10-6	§ 6	
Omitted	§ 7	
Chapter 25, Ordinances, Publication of	L.L. No. 3-1977	7-6-1977
§ 25-1	Section 1	

§ 1-2 New Number (chapter, title, article, section)	Old Number (source)	Adoption Date
§ 25-2	Section 2	
§ 25-3	Section 3	
Chapter 29, Planning Board		
Article I, Establishment	Resolution	3-25-1953
§ 29-1	Unnumbered paragraph	
Chapter 34, Records, Public Access to	Resolution	5-21-1975
§ 34-1	Section 1	
§ 34-2	Section 2	
§ 34-3	Section 3	
§ 34-4	Section 4	
§ 34-5	Section 5	
§ 34-6	Section 6	
§ 34-7	Section 7	
§ 34-8	Section 8	
§ 34-9	Section 9	
Omitted	Section 10	
Chapter 48, Bingo	Ord. No. 5	4-10-1958
§ 48-1	Section 1	Amended 9-4-1963
§ 48-2	Section 2	Amended 9-4-1963
§ 48-3	Section 3	
§ 48-4	Section 4	
§ 48-5	Section 5	
Chapter 52, Building Construction	Ord. No. 1	5-10-1946; amended in its entirety 9-22-1954
§ 52-1	Section I	
§ 52-2	Section II	
	Paragraph 1	
§ 52-3	Section II, Paragraph 2	Amended 3-7-1979
§ 52-4	Section II, Paragraph 3	
§ 52-5	Section II, Paragraph 4	Amended 3-7-1979
§ 52-6	Section III, Paragraph 1	
§ 52-7	Section III, Paragraphs 2, 3, 4 and 5	
§ 52-8	Section III, Paragraphs 6 and 7	
§ 52-9	Section V, Paragraph 1	
Omitted	Section V, Paragraph 2	
Chapter 56, Buildings, Unsafe	Ord. No. 11	12-3-1969

§ 1-2 New Number (chapter, title, article, section)	Old Number (source)	Adoption Date
Omitted	Section 1	
§ 56-1	Section 2	
§ 56-2	Section 3	
§ 56-3	Section 4	
§ 56-4	Section 5	
§ 56-5	Section 6	
§ 56-6	Section 7	
§ 56-7	Section 8	
§ 56-8	Section 9	
§ 56-9	Section 10	
Omitted	Section 11	
Omitted	Section 12	
Chapter 65, Dogs	Ord. No. 14	8-7-1974
	Part I	
Omitted	Section 1.1	
§ 65-1	Section 1.2	
§ 65-2	Section 1.3	
§ 65-3	Section 1.3.1, first and second unnumbered paragraphs	
§ 65-4	Section 1.3.1, third unnumbered paragraph	
§ 65-5	Section 1.4	
§ 65-6	Section 1.5	
§ 65-7	Section 1.6	
§ 65-8	Section 1.7	
§ 65-9	Section 1.8	
§ 65-10	Section 1.9	
§ 65-11	Section 1.10	
§ 65-12	Section 1.11	
§ 65-13	Section 1.12	
§ 65-14	Section 1.13	
§ 65-15	Section 1.13.1	Added 6-6-1979
§ 65-16	Section 1.14	
§ 65-17	Section 1.15.2	
§ 65-18	Section 1.16	
	Part II	

§ 1-2 New Number (chapter, title, article, section)	Old Number (source)	Adoption Date
§ 65-19	Section 1.30	
§ 65-20	Section 1.31	
§ 65-21	Section 1.32	
§ 65-22	Section 1.33	Amended 6-6-1979 by L.L. No. 1-1979
§ 65-23	Section 1.34	
§ 65-24	Section 1.35	
§ 65-25	Section 1.36	
Omitted	Section 1.37	
Chapter 68, Dumps and Dumping	Ord. No. 7	12-6-1961
Omitted	Section 1	
§ 68-1	Section 2	
§ 68-2	Section 3	
§ 68-3	Section 4	
§ 68-4	Section 5	
§ 68-5	Section 6	
§ 68-6	Section 7	
§ 68-7	Section 8	
Omitted	Section 9	
Omitted	Section 10	
Chapter 71, Electrical Standards	Ord. No. 10	7-16-1969
§ 71-1	Section 1	
§ 71-2	Section 2	
§ 71-3	Section 3	
Omitted	Section 4	
Chapter 75, Excavations		
Article I, General Regulations	Ord. No. 4	6-27-1956
§ 75-1	Section I	
§ 75-2	Section II	
§ 75-3	Section III	
§ 75-4	Section IV	
§ 75-5	Section V	
§ 75-6	Section VI	Amended 2-21-1968
§ 75-7	Section VII and VIII	Amended 2-21-1968; 3-7-1979
§ 75-8	Section IX	
§ 75-9	Section XI	

§ 1-2 New Number (chapter, title, article, section)	Old Number (source)	Adoption Date
§ 75-10	Section X	
Omitted	Section XII	
Article II, Registry of Operators of Underground Facilities	Resolution	3-19-1975
§ 75-11	First unnumbered paragraph	
§ 75-12	Second unnumbered paragraph	
§ 75-13	Third unnumbered paragraph	
§ 75-14	Fourth unnumbered paragraph	
Omitted	Fifth unnumbered paragraph	
Chapter 82, Flood Damage Prevention	Ord. No. 20	6-1-1977
Article I	Section 1.0	
§ 82-1	Section 1.1	
§ 82-2	Section 1.2	
Article II		
§ 82-3	Section 2.0	
Article III	Section 3.0	
§ 82-4	Section 3.1	
§ 82-5	Section 3.2	
§ 82-6	Section 3.3	
§ 82-7	Section 3.4	
§ 82-8	Section 3.5	
Article IV	Section 4.0	
§ 82-9	Section 4.1	
§ 82-10	Section 4.2	
§ 82-11	Section 4.3	
§ 82-12	Section 4.4	
Article V	Section 5.0	
§ 82-13	Section 5.1	
§ 82-14	Section 5.2	
§ 82-15	Section 5.3	
	Section 6.0	
Omitted	Section 6.1	
§ 82-16	Section 6.2	
Chapter 86, Games of Chance	Ord. No. 22	6-6-1979
Omitted	§ 1	
§ 86-1	§ 2	

§ 1-2 New Number (chapter, title, article, section)	Old Number (source)	Adoption Date
§ 86-2	§ 3	
§ 86-3	§ 4	
§ 86-4	§ 5	
§ 86-5	§ 6	
§ 86-6	§ 7	
Chapter 97, Mobile Home Parks		
Article I, General Regulations	Ord. No. 19	5-18-1977
Omitted	Section I, Paragraph 1.1	
§ 97-1	Section I, Paragraph 1.2	
§ 97-2	Section II	
§ 97-3	Section III	
Omitted	Section IV	
Article II, Design and Construction Standards	Resolution	7-20-1977
	Article 1	
Omitted	Section 1.1	
§ 97-4	Section 1.2	
§ 97-5	Section 1.3	
§ 97-6	Section 1.4	
§ 97-7	Section 1.5	
	Article 2	
§ 97-8	Section 2.1	
§ 97-9	Section 2.2	
§ 97-10	Section 2.3	
§ 97-11	Section 2.4	
§ 97-12	Section 2.5	
§ 97-13	Section 2.6	
§ 97-14	Section 2.7	
§ 97-15	Section 2.8	
§ 97-16	Section 2.9	
§ 97-17	Section 2.10	
§ 97-18	Section 2.11	
§ 97-19	Section 2.12	
§ 97-20	Section 2.13	
	Article 3	
§ 97-21	Sections 3.1 and 3.2	

§ 1-2 New Number (chapter, title, article, section)	Old Number (source)	Adoption Date	§ 1-2
Chapter 103, Parks			
Article I, Elma Park on Creek Road	Resolution	6-15-1960	
§ 103-1	Paragraphs 1 through 8		
Article II, Additional Regulations	Resolution	5-19-1971	
§ 103-2	First, second, third and fourth paragraphs		
Chapter 115, Sewers	Ord. No. 12	4-16-1969	
Article I			
§ 115-1	Section 1	Amended 4-6-1977 by Ord. No. 18	
Article II	Section 2		
§ 115-2	Section 2.1	Amended 4-6-1977 by Ord. No. 18	
§ 115-3	Section 2.2	Amended 4-6-1977 by Ord. No. 18	
§ 115-4	Section 2.3		
§ 115-5	Section 2.4	Amended 4-6-1977 by Ord. No. 18	
§ 115-6	Section 2.4.1	Added 4-6-1977 by Ord. No. 18	
§ 115-7	Section 2.4.2	Added 4-6-1977 by Ord. No. 18	
Article III	Section 3		
§ 115-8	Section 3.1		
§ 115-9	Section 3.2		
§ 115-10	Section 3.3		
§ 115-11	Section 3.4		
Article IV	Section 4		
§ 115-12	Section 4.1		
§ 115-13	Section 4.2	Amended 4-6-1977 by Ord. No. 18	
§ 115-14	Section 4.3		
§ 115-15	Section 4.4		
§ 115-16	Section 4.5		
§ 115-17	Section 4.6		
§ 115-18	Section 4.7		
§ 115-19	Section 4.8		
§ 115-20	Section 4.9		
§ 115-21	Section 4.10		
§ 115-22	Section 4.11		
Article V	Section 5		
§ 115-23	Section 5.1	Amended 4-6-1977 by Ord. No. 18	
§ 115-24	Section 5.2	Amended 4-6-1977 by Ord. No. 18	

§ 1-2 New Number (chapter, title, article, section)	Old Number (source)	Adoption Date	§ 1-2
§ 115-25	Section 5.3	Amended 4-6-1977 by Ord. No. 18	
§ 115-26	Section 5.4		
§ 115-27	Section 5.5		
§ 115-28	Section 5.6		
Article VI	Section 6		
§ 115-29	Section 6.1		
Article VII	Section 7		
§ 115-30	Section 7.1		
§ 115-31	Section 7.2	Amended 4-6-1977 by Ord. No. 18	
§ 115-32	Section 7.3		
Article VIII	Section 8		
§ 115-34	Section 8.1		
§ 115-35	Section 8.2		
§ 115-36	Section 8.2.1	Added 4-6-1977 by Ord. No. 18	
§ 115-37	Section 8.3		
Chapter 121, Streets and Sidewalks			
Article I, Notification of Defects	L.L. No. 2-1977	5-18-1977	
§ 121-1	Section 1		
§ 121-2	Section 2		
§ 121-3	Section 3		
Omitted	Section 4		
Chapter 123, Subdivision of Land		4-27-1955	
Article I			
§ 123-1	Section I		
§ 123-2	Section II		
Article II			
§ 123-3	Section III, Subsection A		
§ 123-4	Section III, Subsection B		
§ 123-5	Section III, Subsection C	Amended 3-26-1957; 4-15-1959	
Article III			
§ 123-6	Section IV, Subsection A		
§ 123-7	Section IV, Subsection B		
§ 123-8	Section IV, Subsection C		
§ 123-9	Section IV, Subsection D		
§ 123-10	Section IV, Subsection E		

New Number (chapter, title, article, section)	Old Number (source)	Adoption Date
Article IV		
§ 123-11	Section V, Subsection A	
§ 123-12	Section V, Subsection B	Amended 4-15-1959
Article V		
§ 123-13	Section VI, Subsection A	Amended 4-15-1959
§ 123-14	Section VI, Subsection B	Amended 9-4-1968
Article VI		
§ 123-15	Section VII, Subsection A	
§ 123-16	Section VII, Subsection B	
Chapter 127, Taxation		
Article I, Senior Citizens Tax Exemption	Ord. No. 9	3-1-1967
Omitted	Section 1	
§ 127-1	Section 2	
§ 127-2	Section 3	
Omitted	Section 4	
Article II, Business Investment Tax Exemption	L.L. No. 1-1977	4-6-1977
§ 127-3	Section 1	
Omitted	Section 2	
Chapter 134, Vehicles and Traffic		
Article I, Parking	Ord. No. 13	9-6-1972
Omitted	Section 1	
§ 134-1	Section 1.1	
§ 134-2	Section 1.2	
§ 134-3	Section 2	Amended 2-18-1976 by Ord. No. 15; 6-16-1976 by Ord. No. 16; 7-7-1976 by Ord. No. 17
§ 134-5	Section 3	
§ 134-6	Section 4	
Omitted	Section 5	
Chapter 140, Water	Ord. No. 8	8-5-1964
Article I	Article I	
Omitted	Section 1	
§ 140-1	Section 2	
	Article II	

§ 1-2 New Number (chapter, title, article, section)	Old Number (source)	Adoption Date
§ 140-2	Section 1	
	Article III	
§ 140-3	Section 1	
Article II	Article IV	
§ 140-4	Section 1	
§ 140-5	Section 2	
§ 140-6	Section 3	
Article III	Article V	
§ 140-7	Section 1, first paragraph	
§ 140-8	Section 1, Subsection a	
§ 140-9	Section 1, Subsection b	
§ 140-10	Section 1, Subsection c	
§ 140-11	Section 1, Subsection d	
§ 140-12	Section 1, Subsection e	
§ 140-13	Section 1, Subsection f	
§ 140-14	Section 1, Subsection g	
§ 140-15	Section 1, Subsection h	
§ 140-16	Section 1, Subsection i	
§ 140-17	Section 1, Subsection j	
Article IV	Article VI	
§ 140-18	Section 1	Amended 12-17-1975
§ 140-19	Section 2	Amended 12-17-1975
§ 140-20	Section 3	
§ 140-21	Section 4	
Article V	Article VII	
§ 140-22	Section 1	
§ 140-23	Section 2	Amended 12-17-1975; 3-7-1979
§ 140-24	Section 3	
§ 140-25	Section 4	
§ 140-26	Section 5	
§ 140-27	Section 6	
§ 140-28	Section 7	
§ 140-29	Section 8	
Article VI	Article VIII	
§ 140-30	Section 1	

New Number (chapter, title, article, section)	Old Number (source)	Adoption Date
§ 140-31	Section 2	
§ 140-32	Section 3	
§ 140-33	Section 4	
§ 140-34	Section 5	
§ 140-35	Section 6	
§ 140-36	Section 7	
§ 140-37	Section 8	
Article VII	Article IX	
§ 140-38	Section 1	
§ 140-39	Section 2	
§ 140-40	Section 3	
§ 140-41	Section 4	
§ 140-42	Section 5	
§ 140-43	Section 6	
§ 140-44	Section 7	
§ 140-45	Section 8	Amended 12-17-1975
§ 140-46	Section 9	
§ 140-47	Section 10	
§ 140-48	Section 11	
§ 140-49	Section 12	
§ 140-50	Section 13	
Article VIII	Article X	
§ 140-51	Section 1	Amended 12-17-1975
Chapter 144, Zoning	Ord. No. 2	7-18-1950; amended in its entirety 4-19-1967
Article I		
§ 144-1	Section 1 and 1.1.2	
Omitted	Section 1.1.1	
§ 144-2	Section 1.2	Amended 8-2-1972
Article II		
§ 144-3	Section 1.3	
§ 144-4	Section 1.3.1	
§ 144-5	Section 1.3.2	
§ 144-6	Section 1.3.3	
§ 144-7	Section 1.3.4	
§ 144-8	Section 1.3.5	

New Number (chapter, title, article, section)	Old Number (source)	Adoption Date
§ 144-9	Section 1.3.6	
Article III	Section 2	
§ 144-10	Section 2.1	
§ 144-11	Section 2.2	
§ 144-12	Section 2.3	
§ 144-13	Section 2.4	
§ 144-14	Section 2.5	
§ 144-15	Section 2.6	
§ 144-16	Section 2.7	
§ 144-17	Section 2.8	
§ 144-18	Section 2.9	
§ 144-19	Section 2.10	
§ 144-20	Section 2.11	
§ 144-21	Section 2.12	
§ 144-22	Section 2.13	
§ 144-23	Section 2.14	
§ 144-24	Section 2.15	
§ 144-25	Section 2.17	
§ 144-26	Section 2.18	
§ 144-27	Section 2.20	
§ 144-28	Section 2.21	
§ 144-29	Section 2.22	
§ 144-30	Section 2.23	
§ 144-31	Section 2.23.1	
§ 144-32	Section 2.23.2	
§ 144-33	Section 2.23.3	
§ 144-34	Section 2.24	
Article IV	Section 3	
§ 144-35	Section 3.1	
§ 144-36	Section 3.2	Amended 8-2-1972
§ 144-37	Section 3.3	
§ 144-38	Section 3.4	
§ 144-39	Section 3.5	
§ 144-40	Section 3.6	
§ 144-41	Section 3.7	

New Number (chapter, title, article, section)	Old Number (source)	Adoption Date
§ 144-42	Section 3.8	
§ 144-43	Section 3.9	
§ 144-44	Section 3.10	
Article V	Section 4	
§ 144-45	Section 4.1	
§ 144-46	Section 4.2	
§ 144-47	Section 4.3	
§ 144-48	Section 4.4	
§ 144-49	Section 4.5	
§ 144-50	Section 4.6	
Article VI	Section 5	
§ 144-51	Section 5.1	
§ 144-52	Section 5.2	
§ 144-53	Section 5.3	
§ 144-54	Section 5.4	
§ 144-55	Section 5.5	
§ 144-56	Section 5.6	
§ 144-57	Section 5.7	
Article VII	Section 6	
§ 144-58	Section 6.1	Amended 8-2-1972
§ 144-59	Section 6.2	
§ 144-60	Section 6.3	
§ 144-61	Section 6.4	
§ 144-62	Section 6.5	
§ 144-63	Section 6.6	
§ 144-64	Section 6.7	
§ 144-65	Section 6.8	
§ 144-66	Section 6.9	
§ 144-67	Section 6.10	
§ 144-68	Section 6.11	
§ 144-69	Section 6.12	
§ 144-70	Section 6.13	
Article VIII	Section 7	
§ 144-72	Section 7.1	Amended 3-4-1981
§ 144-73	Section 7.2	

New Number (chapter, title, article, section)	Old Number (source)	Adoption Date
§ 144-74	Section 7.3	
§ 144-75	Section 7.4	
§ 144-76	Section 7.5	
§ 144-77	Section 7.6	
§ 144-78	Section 7.7	Amended 3-4-1981
§ 144-79	Section 7.8	
Article IX	Section 8	
§ 144-81	Section 8.1	
§ 144-82	Section 8.2	
§ 144-83	Section 8.3	
§ 144-84	Section 8.4	
§ 144-85	Section 8.5	
§ 144-86	Section 8.6	
Article X	Section 9	
§ 144-88	Section 9.1	
§ 144-89	Section 9.2	
§ 144-90	Section 9.3	
§ 144-91	Section 9.4	
§ 144-92	Section 9.5	
§ 144-93	Section 9.6	
Article XI	Section 11	
§ 144-95	Section 11.1	
§ 144-96	Section 11.2	
§ 144-97	Section 11.3	
§ 144-98	Section 11.4	
§ 144-99	Section 11.5	
§ 144-100	Section 11.6	
§ 144-101	Section 11.7	
§ 144-102	Section 11.8	
Article XII	Section 12	
§ 144-103	Section 12.1	
§ 144-104	Section 12.2	
§ 144-105	Section 12.3	
§ 144-106	Section 12.4	
§ 144-107	Section 12.5	

§ 1-2

§ 1-4

New Number (chapter, title, article, section)	Old Number (source)	Adoption Date
§ 144-108	Section 12.6	
§ 144-109	Section 12.7	
§ 144-110	Section 12.8	
§ 144-111	Section 12.9	
§ 144-112	Section 12.10	
§ 144-113	Section 12.11	Amended 3-7-1979
§ 144-114	Section 12.12	
§ 144-115	Section 12.13	
§ 144-116	Section 12.14	
Article XIII	Section 13	
§ 144-117	Section 13.1	
§ 144-118	Section 13.2	
Article XIV	Section 14	
§ 144-119	Section 14.1	
§ 144-120	Section 14.2	
§ 144-121	Section 14.4	
§ 144-122	Section 14.5	
§ 144-123	Section 14.6	
§ 144-124	Section 14.7	
Omitted	Section 15	
Article XV	Section 2.19	
§ 144-125	Section 2.19.1	
§ 144-126	Section 2.19.1.2	
§ 144-127	Section 2.19.1.3	
§ 144-128	Section 2.19.1.4	
§ 144-129	Section 2.19.1.5	
§ 144-130	Section 2.19.1.6	
§ 144-131	Section 2.19.1.7	
§ 144-132	Section 2.19.1.8	
§ 144-133	Section 2.19.1.9	
§ 144-134	Section 2.19.2.1	

§ 1-3. Repeal of enactments not included in Code.

All local laws, ordinances and resolutions of a general and permanent nature of the Town of Elma in force on the date of the adoption of this local law and not contained in such Code or recognized and continued in force by reference therein are hereby repealed from and after the effective date of this local law.

§ 1-4

§ 1-7

§ 1-4. Enactments saved from repeal; matters not affected.

The repeal of local laws and ordinances provided for in § 1-3 of this local law shall not affect the following classes of local laws, ordinances, resolutions, rights and obligations, which are hereby expressly saved from repeal.

- A. Any right or liability established, accrued or incurred under any legislative provision of the Town of Elma prior to the effective date of this local law, or any action or proceeding brought for the enforcement of such right or liability.
- B. An offense or act committed or done before the effective date of this local law in violation of any legislative provision of the Town of Elma, or any penalty, punishment or forfeiture which may result therefrom.
- C. Any prosecution, indictment, action, suit or other proceeding pending, or any judgment rendered prior to the effective date of this local law, brought pursuant to any legislative provision of the Town of Elma.
- D. Any franchise, license, right, easement or privilege heretofore granted or conferred by the Town of Elma.
- E. Any local law, ordinance or resolution of the Town of Elma providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place within the Town of Elma or any portion thereof.
- F. Any local law, ordinance or resolution of the Town of Elma appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Town of Elma or other instruments or evidence of the Town's indebtedness.
- G. Local laws, ordinances or resolutions authorizing the purchase, sale, lease or transfer of property, or any lawful contract or obligation.
- H. The levy or imposition of special assessments or charges.
- I. The dedication of property.
- J. Any local laws, ordinances or resolutions relating to salaries.
- K. Any and all Zoning Map amendments.
- L. A resolution adopted May 5, 1971, establishing a Narcotic Guidance Council.
- M. Any local law, ordinance or resolution adopted subsequent to March 4, 1981.

§ 1-5. Effect on previously adopted legislation.

In compiling and preparing the local laws, ordinances and resolutions of the Town for publication as the Code of the Town of Elma, as distributed and designated in the table in § 1-2 hereof, no changes in the meaning or intent of such local laws, ordinances and resolutions have been made.

§ 1-6. Severability.

If any clause, sentence, paragraph, section, Article or part of this local law or of any local law, ordinance or resolution cited in the table in § 1-2 hereof, or any local law, ordinance or resolution included in this Code through supplementation, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, Article or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 1-7

§ 1-13

§ 1-7. Copy of Code on file.

A copy of the Code, in loose-leaf form, has been filed in the office of the Town Clerk of the Town of Elma and shall remain there for use and examination by the public until final action is taken on this local law; and, if this local law shall be adopted, such copy shall be certified to by the Town Clerk of the Town of Elma by impressing thereon the Seal of the Town of Elma, and such certified copy shall remain on file in the office of said Town Clerk to be made available to persons desiring to examine the same during all times while the said Code is in effect.

§ 1-8. Amendments to Code.

Any and all additions, deletions, amendments or supplements to any of the local laws, ordinances and resolutions known collectively as the "Code of the Town of Elma," or any new local laws, ordinances or resolutions, when enacted or adopted in such form as to indicate the intention of the Town Board to be a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code shall be understood and intended to include such additions, deletions, amendments or supplements. Whenever such additions, deletions, amendments or supplements to the Code shall be enacted or adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing such Code, as amendments and supplements thereto. Nothing contained in this local law shall affect the status of any local law, ordinance or resolution contained herein, and such local laws, ordinances or resolutions may be amended, deleted or changed from time to time as the Town Board deems desirable.

§ 1-9. Code book to be kept up-to-date.

It shall be the duty of the Town Clerk to keep up-to-date the certified copy of the book containing the Code of the Town of Elma required to be filed in the office of the Town Clerk for use by the public. All changes in said Code and all local laws, ordinances and resolutions adopted by the Town Board subsequent to the enactment of this local law in such form as to indicate the intention of said Board to be a part of said Code shall, when finally enacted or adopted, be included therein by temporary attachment of copies of such changes or local laws, ordinances or resolutions until such changes or local laws, ordinances or resolutions are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

§ 1-10. Sale of Code book; supplementation.

Copies of the Code may be purchased from the Town Clerk of the Town of Elma upon the payment of a fee to be set by resolution of the Town Board, which may also arrange by resolution for procedures for the periodic supplementation thereof.

§ 1-11. Penalties for tampering with Code.

Any person who, without authorization from the Town Clerk, changes or amends by additions or deletions, any part or portion of the Code of the Town of Elma, or who alters or tampers with such Code in any manner whatsoever which will cause the legislation of the Town of Elma to be misrepresented thereby, or who violates any other provision of this local law, shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than \$250 or imprisonment for a term of not more than 15 days, or both.

§ 1-12. Incorporation of provisions into Code.

The provisions of this local law are hereby made Article I of Chapter 1 of the Code of the Town of Elma, such local law to be entitled "General Provisions, Article I, Adoption of Code," and the sections of this local law shall be numbered §§ 1-1 to 1-13, inclusive.

§ 1-13. When effective.

This local law shall take effect immediately upon filing with the Secretary of State of the State of New York.

Chapter 3
ASSESSMENTS

§ 1-13

§ 1-13

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

GENERAL REFERENCES

Taxation — See Ch. 127.

ARTICLE I
Office of Receiver of Taxes Abolished
[Adopted 7-19-2006 by L.L. No. 2-2006]

§ 3-1. Purpose.

The purpose of this article is to abolish the Office of Receiver of Taxes in the Town of Elma New York and to transfer all powers and duties of that office to the Office of the Town Clerk of the Town of Elma, New York.

§ 3-2. Abolition.

The Office of Receiver of Taxes in the Town of Elma, New York, is hereby abolished. The powers and duties of that office shall be transferred to the Office of the Town Clerk of the Town of Elma, New York, effective on the 8th day of November 2006.

§ 3-3. Mandatory referendum.

This article is adopted subject to a mandatory referendum and shall be submitted for approval of the qualified voters of the Town of Elma at the next general election which is not less than 60 days after the adoption of this article.¹

§ 3-4. Effective date.

This article shall take effect upon the affirmative vote of a majority of the qualified voters of the Town of Elma at the said election and the filing with the Office of the New York Secretary of State in accordance with the applicable provisions of law. Effective date: November 8, 2006.

§ 3-5. Statutory authority.

This article is adopted pursuant to the provisions of the Municipal Home Rule Law and the Town Law the State of New York.

1. Editor's Note: This article was approved at referendum 11-8-2006.

§ 3-6

§ 3-6

ARTICLE II
Grievance Day
[Adopted 5-20-2015 by L.L. No. 3-2015]

§ 3-6. Alternate date.

Grievance Day shall be the first Tuesday in June on an alternate date due to the sharing of the Assessor with the Town of West Seneca, New York.

Chapter 7

CONSERVATION BOARD

§ 3-6

[HISTORY: Adopted by the Town Board of the Town of Elma 9-21-2005. Amendments noted where applicable.]

§ 3-6

GENERAL REFERENCES

Conservation easements — See Ch. 70.

§ 7-1. Legislative intent.

The preservation and improvement of the quality of the natural and man-made environment within the Town of Elma in the face of population growth, urbanization and technological change, with their accompanying demands on natural resources, are found to be of increasing and vital importance to the health, welfare and economic well-being of present and future inhabitants and require forthright action by this Town Board. It is recognized that the biologic integrity of the environment, on which man is dependent for survival and the natural and functional beauty of our surroundings, which condition the quality of our life experience, cannot be protected without the full cooperation and participation of all of the people of the Town working in partnership with local and state officials and with various public and private institutions, agencies and organizations. Establishment of a Conservation Board is a necessary step fostering unified action on environmental problems.

§ 7-1

§ 7-2

§ 7-2. Establishment.

The Town Board of the Town of Elma hereby creates a board which shall be known as the "Town of Elma Conservation Board," hereinafter called the "Board."

§ 7-3. Membership.

- A. The Board shall consist of seven members, who shall be appointed by the Town Board. One of the members so appointed may be, but is not required to be, at the time of his appointment, between the ages of 16 and 21 years of age. Persons residing within the Town of Elma who are interested in the improvement and preservation of environmental quality shall be eligible for appointment as a member of the Board. Vacancies on the Board shall be filled in the same manner as the original appointment, except that a vacancy occurring other than by expiration of term of office shall be filled only for the remainder of the unexpired term.
- B. In addition to the above, a member of the Town Board to be selected by the Town Board shall be an ex officio member of the Board, but shall not have a vote as a member of the Board.

§ 7-3

§ 7-4

§ 7-4. Terms.

All members shall be appointed for terms of seven years.

§ 7-4

§ 7-5

§ 7-5. Officers; rules and regulations.

- A. The Town Board shall designate a member of the Board to act as Chairman thereof.
- B. At the first meeting of the Board, its members shall elect from among themselves a Recording Secretary.
- C. The Board shall adopt rules and procedures for its meetings, it shall keep accurate records of its meetings and activities and shall file an annual report as provided in § 7-7 of this chapter.

§ 7-6. Powers and duties.

The powers and duties of the Board shall be to:

- A. Advise the Town Board on matters affecting the preservation, development and use of the natural and man-made features and conditions of the Town insofar as beauty, quality, biologic integrity and other environmental factors are concerned and, in case of man's activities and developments, with regard to any major threats posed to environmental quality, so as to enhance the long-range value of the environment to the people of the Town.
- B. Develop and, after receiving general approval by resolution of the Town Board, conduct a program of public information in the community which shall be designed to foster increased understanding of the nature of environmental problems and issues and support for their solutions.
- C. Conduct studies, surveys and inventories of the natural and man-made features within the Town of Elma and such other studies and surveys as may be necessary to carry out the general purposes of this chapter.
- D. Maintain an up-to-date inventory or index of all open spaces in public or private ownership within the Town Elma, including, but not limited to, natural landmarks, glacial and other geomorphic or physiographic features; streams and their floodplains, swamps, marshlands and other wetlands; unique biotic communities; scenic and other open areas of natural or ecological value and of the ownership, present use and proposed use of such open areas, so as to provide a base of information for recommendations by the Board for their preservation and/or use.
- E. Seek to coordinate, assist and unify the efforts of private groups, institutions and individuals within the Town of Elma in accordance with the purpose of this chapter.
- F. Maintain liaison with public and private agencies and organizations of local, state and national scope whose programs and activities have an impact on the quality of the environment or who can be of assistance to the Board.
- G. Working in cooperation with the Town Planning Board, recommending from time to time to the Town Board features, plans and programs relating to environmental improvement for inclusion in the Master Plan of the Town of Elma and, similarly, recommend to the Town Board appropriate and desirable changes in local laws and ordinances relating to environmental control.
- H. Carry out such other duties as may be assigned from time by the Town Board.

§ 7-6

§ 7-7

§ 7-7. Reports.

The Board shall submit an annual report to the Town Board not later than the first day of June of each year concerning the activities and work of the Board and from time to time shall submit such reports and recommendations as may be necessary to fulfill the purposes of this chapter.

§ 7-7

§ 7-8

§ 7-8. Compensation; expenses.

The reasonable and necessary expense of the Board shall not exceed the appropriations that may be made therefor by the Town Board. The charges and expenses so permitted by appropriation of the Town Board for such Board shall be a charge upon the taxable property of that part of the Town of Elma outside of the Incorporated Town of Elma and shall be assessed, levied and collected therefrom in the same manner as other Town charges.

§ 7-8

§ 7-9

§ 7-9. State assistance.

To assist the Board in carrying out its functions, powers and duties, it may request the New York State Department of Conservation to provide research and other technical assistance, in accordance with the provisions of § 239-x of the General Municipal Law of the State of New York.

§ 7-9

§ 7-10

§ 7-10. Construal of provisions.

This chapter shall be deemed an exercise of the powers of the Town of Elma to preserve and improve the quality of the natural and man-made environment on behalf of the present and future inhabitants thereof. This chapter is not intended and shall not be deemed to impair the powers of any other public corporation.

Chapter 8

ENVIRONMENTAL COMMISSION

§ 7-10

§ 8-1

[HISTORY: Adopted by the Town Board of the Town of Elma 11-3-1971 by L.L. No. 1-1971. Amendments noted where applicable.]

§ 8-1. Legislative intent.

The preservation and improvement of the quality of the natural and man-made environment within the Town of Elma, in the face of population growth, urbanization and technologic change, with their accompanying demands on natural resources, are found to be of increasing and vital importance to the health, welfare and economic well-being of present and future inhabitants and require forthright action by the governing body of the Town of Elma. It is recognized that the biologic integrity of the natural environment on which man is dependent for survival and the natural and functional beauty of our surroundings which condition the quality of our life experience cannot be protected without the full cooperation and participation of all the people of the Town of Elma, working in partnership with local and state officials and with various public and private institutions, agencies and organizations. Establishment of a Commission for Conservation of the Environment is a necessary step in fostering unified action on environmental problems.

§ 8-1

§ 8-2

§ 8-2. Establishment.

The Town Board of the Town of Elma hereby creates a Commission which shall be known as the "Elma Commission for Conservation of the Environment," hereinafter called "the Commission."

§ 8-2

§ 8-3

§ 8-3. Membership; vacancies; terms of office.

- A. The Commission shall consist of nine members of which nine shall be appointed by the Town Board and who shall serve at the pleasure of said Town Board. Persons residing within the Town of Elma who are interested in the improvement and preservation of environmental quality shall be eligible for appointment as members of the Commission.
- B. Vacancies on the Commission shall be filled in the same manner as the original appointment, except that a vacancy occurring other than by the expiration of term of office shall be filled only for the remainder of the unexpired term.
- C. Four of said members so appointed shall hold office for terms of one year, and five for terms of two years. Successors of members initially appointed shall serve for terms of two years.

§ 8-3

§ 8-4

§ 8-4. Organization; records and reports.

The Town Board shall designate a member of the Commission to act as Chairman thereof. At the first meeting of the Commission, its members shall elect from among themselves a Recording Secretary. The Commission shall adopt rules and procedures for its meetings. It shall keep accurate records of its meetings and activities and shall file an annual report as provided in § 8-6 of this chapter.

§ 8-5. Powers and duties.**A.** The powers and duties of the Commission shall be to:

- (1) Advise the Town Board on matters affecting the preservation, development and use of the natural and man-made features and conditions of the Town, insofar as beauty, quality, biologic integrity and other environmental factors are concerned, and, in the case of man's activities and developments, with regard to any major threats posed to environmental quality, so as to enhance the long-range value of the environment to the people of the Town.
- (2) Develop and, after receiving general approval by resolution of the Town Board, conduct a program of public information in the community, which program shall be designed to foster increased understanding of the nature of environmental problems and issues and support for their solutions.
- (3) Conduct studies, surveys and inventories of the natural and man-made features within the Town of Elma and such other studies and surveys as may be necessary to carry out the general purposes of this chapter.
- (4) Maintain an up-to-date inventory or index of all open spaces in public or private ownership within the municipality, including but not limited to natural landmarks, glacial and other geomorphic or physiographic features; streams and their floodplains, swamps, marshland and other wetlands; unique biotic communities; scenic and other open areas of natural and ecological value, and of the ownership, present use and proposed use of such open areas, so as to provide a base of information for recommendations by the Commission for their preservation and/or use.
- (5) Seek to coordinate, assist and unify the efforts of private groups, institutions and individuals within the Town of Elma in accord with the purposes of this chapter.
- (6) Maintain liaison and communications with public and private agencies and organizations of local, state and national scope whose programs and activities have an impact on the quality of the environment or who can be of assistance to the Commission.
- (7) Working in cooperation with the Planning Board, recommend from time to time to the Town Board features, plans and programs relating to environmental improvement for inclusion in the Master Plan of the Town of Elma and, similarly, recommend to the Town Board appropriate and desirable changes in existing local laws and ordinances relating to environmental control or recommend new local laws and ordinances.
- (8) Prepare, print and distribute books, maps, charts and pamphlets in accord with the purposes of this chapter.
- (9) Obtain and maintain in orderly fashion maps, reports, books and other publications to support the necessary researches of the Commission into local environmental conditions.
- (10) Carry out such other duties as may be assigned from time to time by the Town Board.

B. When authorized by resolution of the Town Board of the Town of Elma, the Commission may accept, by gift, grant, devise, bequest or otherwise, property, both real and personal, in the name of the Town of Elma, as may be necessary to conserve and otherwise properly utilize open spaces and other land and water resources within the boundaries of the Town of Elma. Such real property may be accepted in fee for land and water rights or as any lesser interest, development right, easement, including conservation easement, covenant or other contractual right, including conveyance with limitations or reversions.

§ 8-5

§ 8-6

§ 8-6. Reports and recommendations.

The Commission shall submit an annual report to the Town Board, not later than the first day of April of each year, concerning the activities and work of the Commission and, from time to time, shall submit such reports and recommendations as may be necessary to fulfill the purposes of this chapter.

§ 8-6

§ 8-7

§ 8-7. Compensation.

The members of the Commission shall receive no compensation for their services as members thereof but may be reimbursed for reasonable and necessary expenses incurred in the performance of their duties within the appropriations made available therefor.

§ 8-7

§ 8-8

§ 8-8. Interpretation of provisions.

This chapter shall be deemed an exercise of the powers of the Town of Elma to preserve and improve the quality of the natural and man-made environment on behalf of the present and future inhabitants thereof. This chapter is not intended and shall not be deemed to impair the powers of any other public corporation.

Chapter 10
ETHICS, CODE OF

§ 8-8

[HISTORY: Adopted by the Town Board of the Town of Elma 10-21-1970. Amendments noted where applicable.]

§ 8-8

GENERAL REFERENCES

Officers and employees — See Ch. 24.

Personnel policies — See Ch. 27.

§ 10-1. Statement of purpose.

Pursuant to the provisions of § 806 of the General Municipal Law, the Town Board of the Town of Elma recognizes that there are rules of ethical conduct for public officers and employees which must be observed if a high degree of moral conduct is to be obtained and if public confidence is to be maintained in our unit of local government. It is the purpose of this chapter to promulgate these rules of ethical conduct for the officers and employees of the Town of Elma. These rules shall serve as a guide for official conduct of the officers and employees of the Town of Elma. The rules of ethical conduct of this chapter, as adopted, shall not conflict with, but shall be in addition to, any prohibition of Article 18 of the General Municipal Law or any other general or special law relating to ethical conduct and interest in contracts of municipal officers and employees.

§ 10-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

INTEREST — A pecuniary or material benefit accruing to a municipal officer or employee unless the context otherwise requires.

MUNICIPAL OFFICER OR EMPLOYEE — An officer or employee of the Town of Elma, whether paid or unpaid, including members of any administrative board, commission or other agency thereof. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer.

§ 10-3. Standards of conduct.

Every officer or employee of the Town of Elma shall be subject to and abide by the following standards of conduct:

- A. Gifts. He shall not directly or indirectly solicit any gift or accept or receive any gift having a value of \$25 or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or could reasonably be expected to influence him in the performance of his official duties or was intended as a reward for any official action on his part.
- B. Confidential information. He shall not disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interest.
- C. Representation before one's own agency. He shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee.
- D. Representation before any agency for a contingent fee. He shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of his municipality, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this subsection shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.
- E. Disclosure of interest in legislation. To the extent that he knows thereof, a member of the Town Board of Elma and any officer or employee of the Town of Elma, whether paid or unpaid, who participates in the discussion or gives official opinion to the Town Board on any legislation before the Town Board, shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest he has in such legislation.
- F. Investments in conflict with official duties. He shall not invest or hold any investment, directly or indirectly, in any financial, business, commercial or other private transaction which creates a conflict with his official duties.
- G. Private employment. He shall not engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of his official duties.
- H. Future employment. He shall not, after the termination of service or employment with such municipality, appear before any board or agency of the Town of Elma in relation to any case, proceeding or application in which he personally participated during the period of his service or employment or which was under his active consideration.

§ 10-3

§ 10-4

§ 10-4. Filing of claims.

Nothing herein shall be deemed to bar or prevent the timely filing by a present or former municipal officer or employee of any claim, account, demand or suit against the Town of Elma or any agency thereof on behalf of himself or any member of his family arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

§ 10-4

§ 10-5

§ 10-5. Distribution of copies. [Amended 6-3-1981]

The Supervisor of the Town of Elma shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the Town of Elma within 30 days after the effective date of this chapter. Each officer and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of his office or employment. Failure to distribute any such copy or failure of any officer or employee to receive such copy shall have no effect on the duty of compliance with such code or the enforcement of provisions thereof.

§ 10-5

§ 10-6

§ 10-6. Penalties for offenses.

In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate any of the provisions of this code may be fined, suspended or removed from office or employment, as the case may be, in the manner provided by law.

Chapter 24

OFFICERS AND EMPLOYEES

§ 10-6

§ 10-6

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

GENERAL REFERENCES

Code of Ethics — See Ch. 10.

Personnel policies — See Ch. 27.

ARTICLE I
Residency Requirements
[Adopted 12-19-2007 by L.L. No. 2-2007]

§ 24-1. Title.

This article shall be known as the "Residency Requirements Local Law No. 2-2007."

§ 24-2. Purpose.

The purpose of this article is to require residency for employment in the Town of Elma.

§ 24-3. Town residency required.

On and after the effective date of this article, it shall be the duty of each employee of the Town of Elma during the period of his or her employment by the Town to maintain his or her residence or dwelling within the corporate limits of the Town. The provisions of this section shall not apply to any employee principally engaged in Town activities outside the corporate limits of the Town.

§ 24-4. Compliance by employees not now living within Town.

Any employee who, on the effective date of this article, does not maintain his or her residence or dwelling within the corporate limits of the Town shall, within the period of one year from the effective date, maintain a residence or dwelling within the corporate limits of the Town.

§ 24-5. Relief from provisions.

If the Elma Town Board, after investigation, determines that enforcement of the provision of this article works an undue hardship upon any employee, it may grant relief to such employee as the Board, in its judgment, deems just and proper.

§ 24-6. Failure to comply.

Failure of any employee to comply with any of the provisions of this article shall constitute misconduct and shall be cause for removal in the manner provided by law and pursuant to the Town of Elma Town Policy.

§ 24-7. Exceptions.

Provisions of this article shall not apply to elected officials or other employees whose residence requirements are established by law.

Chapter 25

ORDINANCES, PUBLICATION OF

§ 24-7

§ 25-1

[HISTORY: Adopted by the Town Board of the Town of Elma 7-6-1977 by L.L. No. 3-1977. Amendments noted where applicable.]

§ 25-1. Summary publication.

Every ordinance and every amendment or supplement to an ordinance hereafter adopted or approved by the Town Board of the Town of Elma, which is or may be required to be published in one or more newspapers in order to make such ordinance, amendment or supplement effectual, shall not be so published in full, but it shall be sufficient to publish in such newspaper or newspapers a notice setting forth the title thereof, a brief description of the provisions thereof and a statement that the full text thereof is on file and may be inspected in the office of the Town Clerk.

§ 25-1

§ 25-2

§ 25-2. Supersession of statute.

This chapter shall supersede in their application to the Town of Elma the provisions of §§ 133, 264 and 265 of the Town Law relating to publication only of an ordinance, amendment or a supplement to an ordinance adopted or approved by the Town Board.

§ 25-2

§ 25-3

§ 25-3. Permissive referendum; when effective.

This chapter shall be subject to referendum on petition pursuant to § 24 of the Municipal Home Rule Law and shall take effect immediately upon filing in the office of the Secretary of State in accordance with § 27 of such law.

Chapter 27

PERSONNEL POLICIES

§ 25-3

§ 25-3

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

GENERAL REFERENCES

Code of Ethics — See Ch. 10.

Officers and employees — See Ch. 24.

ARTICLE I
Workplace Violence Prevention
[Adopted 8-19-2009]

§ 27-1. Policy.

- A. It is the policy of the Town of Elma to ensure a safe workplace and to reduce the risk of violence to our employees and citizens. It is a shared obligation of all employees and citizens, individually and collectively, to prevent and/or defuse actual or implied violent behavior (verbal or physical) at work.
- B. Any person who engages in a violent or threatening manner, either verbal or physical in nature, will be removed from the premises as quickly as safety permits.
- C. At the Town's discretion, employees and/or the public may be barred from the Town's premises pending the outcome of an investigation. Any employee who engages in such behavior may be subject to disciplinary action up to and including termination, criminal penalties, or both.

§ 27-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

VIOLENT BEHAVIOR ON THE JOB — Includes, but is not limited to:

- A. Causing or attempting to cause physical injury to another person;
- B. Intentional destruction or threat of destruction of Town property or another person's personal property;
- C. Expressing intent to cause physical harm or emotional duress;
- D. Acting in a hostile manner through unwelcome words, actions or physical contact not resulting in physical harm to another person;
- E. Surveillance or stalking;
- F. Possession of a weapon while on Town property or while on Town business without proper authorization;
- G. Veiled threats of physical harm or intimidation;
- H. Expression of suicidal or homicidal intent or thoughts; and
- I. Unusual agitation or excitement, which may be accompanied by incoherent and/or irrational behavior or harassment.

§ 27-3. Procedures.

- A. Law enforcement officials will be notified as soon as possible of any situation that has the potential for immediate danger to the safety of an employee or any other person.
- B. All employees are responsible to inform their immediate department head of any condition or behavior that the employee experiences or witnesses and believes places the employee and/or others at risk of injury. Such actions may include, but are not limited to, any of the violent behavior definitions referenced above.
- C. Once notified a department head will report all employee concerns to the Town Supervisor. The Town Supervisor will:
 - (1) Take immediate action to end the dangerous or harassing behavior;
 - (2) Notify the Personnel Committee;

(3) If appropriate, take appropriate disciplinary action.

- D. The Personnel Committee will assure that a full investigation is made and will assist the Town Supervisor in resolving the issue.
- E. Reports should be made regardless of whether the potentially dangerous person is a coworker or a nonemployee. Reports or incidents warranting confidentiality will be handled appropriately, and information will be disclosed to others on a need-to-know basis. This policy does not prevent employees from directly notifying law enforcement officials of the problems.
- F. Emergency situation. It is recommended that employees who are confronted by or who encounter an armed or dangerous person not attempt to challenge or disarm the individual. The employee should use his/her best judgment under the circumstances to avoid injury to him/her or others. If the employee is able to contact the Police Department or emergency assistance safely, then the employee should do so immediately or as soon as possible.
- G. Enforcement. Threats, threatening conduct, or any other acts of aggression or violence in the workplace will not be tolerated. Any employee determined to have committed such acts will be subject to disciplinary action, up to and including termination. Reports to law enforcement officials will be made as appropriate. Nonemployees engaged in violent acts in or affecting the workplace will also be reported to the proper authorities. The Town will cooperate fully with law enforcement authorities during any investigation.
- H. Eligibility for rehire. Employees terminated for violating a provision of this policy shall not be eligible for rehire with the Town in any capacity.

Chapter 29
PLANNING BOARD

§ 27-3

§ 27-3

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

GENERAL REFERENCES

Site plan review — See Ch. 117.

Zoning — See Ch. 144.

Subdivision of land — See Ch. 123.

§ 29-1

§ 29-1

ARTICLE I
Establishment
[Adopted 3-25-1953]

§ 29-1. Board established; membership.

The Town Board of the Town of Elma hereby establishes a Planning Board in the Town of Elma consisting of seven members, as provided for in Article 16, § 271, of the Town Law of the State of New York.

ARTICLE II
Powers and Duties
[Adopted 5-6-1981]

§ 29-2. Delegation of powers.

The Planning Board of the Town of Elma is hereby empowered to follow the law as provided by §§ 272, 272-a, 273, 274, 275 and 276 of the Town Law.²

2. Editor's Note: Sections 272, 274 and 275 of the Town Law were repealed by L. 1992, c. 663, § 1, effective 7-1-1993. See now § 271 of the Town Law.

ARTICLE III
Appointment of Secretary
[Adopted 12-16-2015 by L.L. No. 4-2015]

§ 29-3. Legislative intent.

This article shall apply to the appointment, terms, functions and powers of the appointment and employment of the Secretary to the Planning Board.

§ 29-4. Definitions.

As used in this article, the following terms shall have the meanings indicated:

PLANNING BOARD — The Planning Board of the Town of Elma as established by the Town Board pursuant to the provisions of § 271 of Town Law.

SECRETARY — The Secretary to the Planning Board.

§ 29-5. Appointment authority.

- A. The Town Board of the Town of Elma hereby enacts this article to provide a process for appointing the Secretary to the Planning Board to assist the Planning Board.
- B. The authority of the Planning Board regarding the appointment and employment of the Secretary to the Planning Board shall be transferred to the Town Board.
- C. The Secretary to the Planning Board shall be appointed by the Town Board to assist the Planning Board.

§ 29-6. Supersession of Town Law.

This article is hereby adopted pursuant to the provisions of § 10 of the NYS Municipal Home Rule Law and § 10 of the NYS Statute of Local Governments. It is the intent of the Town Board, pursuant to § 10 of the NYS Municipal Home Rule Law, to supersede the provisions of § 271, Subdivision 2, of the Town Law relating to the appointment or employment of the Secretary to the Planning Board appointed or employed to assist the Planning Board.

Chapter 31

POLICE DEPARTMENT

[HISTORY: Adopted by the Town Board of the Town of Elma 9-3-2014 by L.L. No. 4-2014. Amendments noted where applicable.]

§ 31-1. Legislative intent.

- A. The Town Board of the Town of Elma recognizes that the Constitution of the State of New York and the Municipal Home Rule Law of the State of New York afford towns the ability to structure their local governments as needed to promote the efficiency of Town operations. The Municipal Home Rule Law specifically authorizes a Town to create or discontinue departments; to prescribe or modify the powers and duties of such departments; and to specify the powers, duties, qualifications, number and mode of selection of its officers and employees. The Municipal Home Rule Law also authorizes a Town to supersede any provision of the Town Law relating to the property, affairs or government of the Town or to other matters in relation to which and to the extent to which it is authorized to adopt local laws, subject to the limitations provided therein. The Town Board accordingly intends to exercise those powers to hereby constitute the Town of Elma Police Department as a department of Town government under the immediate supervision of the Town Supervisor.
- B. This legislation is intended to improve the Town's ability to provide for the safety of persons who live in, work in and visit the Town of Elma. To that end, the Town Board seeks to encourage traditional and nontraditional approaches to public safety, including the expansion of cooperative efforts with other Town departments, with outside law enforcement agencies and other municipal entities at the local, county, state and federal level.

§ 31-1

§ 31-2

§ 31-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

DEPARTMENT — The Town of Elma Police Department.

SUPERVISOR — The Town Supervisor of the Town of Elma.

TOWN BOARD — The Town Board of the Town of Elma.

§ 31-2

§ 31-3

§ 31-3. Police Department.

- A. The Town of Elma Police Department is hereby constituted as a department of Town government.
- B. The Town Board shall determine the number of officers and employees in all positions within the Department, all of whom shall be appointed by the Town Board.
- C. All Department personnel shall be under the immediate supervision of Town Supervisor, who shall ultimately be subject to the direction and supervision of the Town Board.

§ 31-3

§ 31-4

§ 31-4. Town Board powers and duties.

- A. The Town Board will have overall responsibility for the planning, management and administration of the operations and activities of the Police Department, including budgetary and financial management of the Department, and external contacts with other agencies, jurisdictions, the media and Town residents.
- B. The Town Board shall have such powers and shall execute such duties as would otherwise be exercised by a Board of Police Commissioners as specified in Town Law § 150, Subdivision 2. Without limitation, the Board shall:
 - (1) Develop, implement and enforce policies and procedures for the administration of all Police Department operations;
 - (2) Plan, organize, direct, coordinate and supervise on an overall basis all activities of the Police Department;
 - (3) Coordinate financial planning for the Department, including preparation of budgets, maintenance of fiscal control, and submission of required reports to other agencies as required;
 - (4) Coordinate and approve departmental budgetary planning and procedures;
 - (5) Approve all contracts for coordination and/or cooperation with other agencies and municipal entities for the provision of law enforcement within the Town of Elma;
 - (6) Determine staffing and changes in the employment, promotion, removal and status of any member of the Police Department (civilian and noncivilian), subject to the provisions of the Civil Service Law, and as recommended by the Supervisor;
 - (7) Subject to the advice of the Supervisor, approve the training of police personnel in legal aspects of police duties and responsibilities;
 - (8) Have such authority and perform such other duties as are required and/or customarily performed by a Board of Police Commissioners.

§ 31-5. Administration of Department.

- A. Subject to the Town Board's overall authority as described in § 31-1, immediate supervision over Police Department employees, and immediate administration of Police Department operations, shall be exercised by the Town Supervisor, pursuant to Municipal Home Rule Law § 10(1)(ii)(d)(3).
- B. The Supervisor shall have such powers and shall execute such duties as would otherwise be exercised by a Police Chief as specified in Town Law § 150, Subdivision 2, subject to the limitations set forth in § 31-1, which duties shall include:
 - (1) Adopt policies and procedures for the administration of all Department operations;
 - (2) Plan, organize, direct, coordinate and supervise all activities of the Department;
 - (3) Coordinate preparation of reports and make recommendations for financial planning for the Department, including the Department's budget;
 - (4) Advise and recommend staffing and changes in the employment, promotion, removal and status of any member of the Department (civilian and noncivilian);
 - (5) Prepare all reports required to be submitted on behalf of the Department or the Town of Elma to other agencies;
 - (6) Carry out police enforcement of all laws and ordinances applicable to the Town of Elma;
 - (7) Implement any changes required by law in the administration of Department operations, or any other changes that are consistent with law and in the best interests of the Department, the Town of Elma and/or the Town of Elma's residents;
 - (8) Supervise the training of police personnel in legal aspects of police duties and responsibilities;
 - (9) Undertake the formulation and implementation of performance standards by which to measure departmental and employee productivity;
 - (10) Coordinate departmental activities and operations with other agencies, municipal entities and officials;
 - (11) Assist the Town Attorney, as requested, with regard to Department matters;
 - (12) In coordination with the Town Board, establish and maintain effective communications with the media regarding the Department;
 - (13) Meet with individuals, groups, associations, organizations and commissions on behalf of the Department;
 - (14) Represent the Department at police and municipal functions;
 - (15) In coordination with the Town Board, serve as the Department's representative and spokesperson on all matters concerning the Police Department;
 - (16) Coordinate law enforcement efforts with other Town departments and with other municipal agencies;
 - (17) Have such authority and perform such other duties as are required and/or customarily performed by a Police Chief of a municipal police department in New York State.

Chapter 34

RECORDS, PUBLIC ACCESS TO

§ 31-5

§ 34-1

[HISTORY: Adopted by the Town Board of the Town of Elma 5-21-1975. Amendments noted where applicable.]

§ 34-1. Purpose; scope.

- A. The people's right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.
- B. These regulations provide information concerning the procedures by which records may be obtained.
- C. Personnel shall furnish to the public the information and records required by the Freedom of Information Law and those which were furnished to the public prior to its enactment.
- D. Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

§ 34-1

§ 34-2

§ 34-2. Designation of records access officer; powers and duties.

- A. The Town Supervisor is responsible for ensuring compliance with the regulations herein and designates the following person as records access officer: Town Clerk, 1910 Bowen Road, Elma, New York 14059.
- B. Records access officers are responsible for ensuring appropriate agency response to public requests for access to records. However, the public shall not be denied access to records through officials who have, in the past, been authorized to make records or information available. Records access officers shall assure that personnel:
 - (1) Maintain an up-to-date subject matter list.
 - (2) Assist the requester in identifying requested records, if necessary.
 - (3) Upon locating the records, take one of the following actions in accordance with § 34-6B:
 - (a) Make records promptly available for inspection; or
 - (b) Deny access to the records in whole or in part and explain in writing the reasons therefor.
 - (4) Upon request for copies of records:
 - (a) Make a copy available upon payment or offer to pay established fee, if any, in accordance with § 34-8; or
 - (b) Permit the requester to copy those records.
 - (5) Upon request, certify that a transcript is a true copy of records copied.
 - (6) Upon failure to locate records, certify that:
 - (a) The Town of Elma is not the legal custodian for such records; or
 - (b) The records of which the Town of Elma is a legal custodian, after diligent search, cannot be found.

§ 34-2

§ 34-3

§ 34-3. Designation of fiscal officer; powers and duties.

- A. The Town Supervisor, 1910 Bowen Road, Elma, New York 14059, is designated the fiscal officer, who shall certify the payroll and respond to requests, in accordance with § 34-6B, for an itemized record setting forth the name, address, title and salary of every officer or employee of the agency.
- B. The fiscal officer shall make the payroll items listed above available to any person, including bona fide members of the news media, as required under § 88(1)(g), (1)(i) and (10) of the Freedom of Information Law.³

3. Editor's Note: Section 88(1)(g), (1)(i) and (10) was a part of Chapter 578 of the Laws of 1974. Said Chapter 578 was repealed by Chapter 933 of the Laws of 1977, which also enacted a new Freedom of Information Law. See Article 6 of the Public Officers Law.

§ 34-3

§ 34-4

§ 34-4. Location for availability of records.

Records shall be available for public inspection and copying at the Town Hall, 1910 Bowen Road, Elma, New York 14059, or at the location where they are kept.

§ 34-4

§ 34-5

§ 34-5. Hours for public inspection.

Requests for public access to records shall be accepted and records produced during all hours regularly open for business. These hours are 9:00 a.m. to 4:30 p.m., Monday through Friday.

§ 34-6. Request for records.

- A. Where a request for records is required, such request may be oral or in writing. However, written requests shall not be required for records that have been customarily available without written request.
- B. Time limit for response to requests.
 - (1) Except under extraordinary circumstances, officials shall respond to a request for records no more than five business days after receipt of the request, whether the request is oral or in writing.
 - (2) If, because of extraordinary circumstances, more than five business days are required to respond to a request, the receipt of the request shall be acknowledged within five business days after the request is received. The acknowledgement shall state the reason for delay and estimate the date when a reply will be made.
- C. A request for access to records should be sufficiently detailed to identify the records. Where possible, the requester should supply information regarding dates, titles, file designations or other information which may help identify the records. However, a request for any or all records falling within a specific category conforms to the standard that records be identifiable.
- D. List of records by subject matter to be maintained.
 - (1) A current list, by subject matter, of all records produced, filed or first kept or promulgated after September 1, 1974, shall be available for public inspection and copying. The list shall be sufficiently detailed to permit the requester to identify the file category of the records sought.
 - (2) The subject matter list shall be updated periodically, and the date of the most recent updating shall appear on the first page. The updating of the subject matter list shall not be less than semiannual.
- E. No records may be removed by the requester from the office where the record is located.

§ 34-6

§ 34-7

§ 34-7. Denial of access.

- A. Denial of access to records shall be in writing, stating the reason therefor and advising the requester of the right to appeal to the individual or body established to hear appeals.
- B. If requested records are not provided promptly, as required in § 34-6B of these regulations, such failure shall also be deemed a denial of access.
- C. The following person or persons or body shall hear appeals for denial of access to records under the Freedom of Information Law: Town Board, 1910 Bowen Road, Elma, New York 14059.
- D. The time for deciding an appeal by the individual or body designated to hear appeals shall commence upon receipt of written appeal identifying:
 - (1) The date of the appeal.
 - (2) The date and location of the requests for records.
 - (3) The records to which the requester was denied access.
 - (4) Whether the denial of access was in writing or was by failure to provide records promptly as required by § 34-6B.
 - (5) The name and return address of the requester.
- E. The individual or body designated to hear appeals shall inform the requester of its decision, in writing, within seven business days of receipt of an appeal.
- F. A final denial of access to a requested record, as provided for in Subsection E of this section, shall be subject to court review, as provided for in Article 78 of the Civil Practice Law and Rules.

§ 34-7

§ 34-8

§ 34-8. Fees for copies.

A. There shall be no fee charged for:

- (1) Inspection of records.
- (2) Search for records.
- (3) Any certification pursuant to this chapter.

B. Copies of records shall be provided upon payment of a fee of \$0.25 per copy. **[Amended 6-3-1981]**

§ 34-8

§ 34-9

§ 34-9. Public notice.

A notice containing the job titles or names and business addresses of the records access officer and fiscal officer, the name, job title, business address and telephone number of the appeals person or persons or body and the location where records can be seen or copied shall be posted in a conspicuous location wherever records are kept and/or published in a local newspaper of general circulation.

Part II: General Legislation

Chapter 42

ADULT USES

§ 34-9

[HISTORY: Adopted by the Town Board of the Town of Elma 11-6-1996. Amendments noted where applicable.]

§ 34-9

GENERAL REFERENCES

Zoning — See Ch. 144.

§ 42-1. Purpose and intent.

It is recognized that buildings and establishments operated as adult uses have serious objectionable operational characteristics. In order to promote the health, safety and general welfare of the citizens of the Town of Elma, this section is specifically designed to provide that special regulation necessary on such uses in order to prevent proliferation in concentration of such uses and ensure that those effects will not adversely influence the surrounding neighborhoods of whatever zoning.

§ 42-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADULT ARCADE — A person, establishment or business, whether retail or wholesale, having more than a minimal portion off its stock-in-trade, recordings, books, magazines, periodicals, films, videotapes/cassettes or any viewing materials for sale or viewing on or off the premises, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, or a person, establishment or business containing a segment or section devoted to the sale or display of such material.

ADULT MOTION-PICTURE THEATER — An enclosed or unenclosed building, structure or portion thereof used for presenting materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or specified anatomical areas for observation by patrons.

ADULT USES — Any person, establishment or business involved in the viewing or dissemination of material distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activity or specified anatomical areas, and including but not limited to adult arcade, adult motion-picture theater, massage establishment, private modeling establishment and steam bath establishment.

ANATOMICAL AREAS, SPECIFIED —

- A. Less than completely and opaquely covered genitals, pubic region or female breasts below a point immediately above the top of the areola.
- B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

BUSINESS — Any commercial enterprise, association or arrangement for profit.

DISSEMINATION — The transfer of possession, custody, control or ownership of or the exhibition or presentation of any performance to a customer, member of the public or business invitee of any material distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or specified anatomical areas.

MASSAGE ESTABLISHMENT — Any establishment having a fixed place of business where massages, body rubs, sports rubs, hot-oil body rubs or similar services are administered. This definition shall not be construed to include a hospital, bona fide medical or health service establishment, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed physical therapist, licensed massage therapist or barbershops, beauty shop and beauty salons in which massages are administered only to the scalp, face, neck or shoulders.

PERSON — Any individual, firm, partnership, corporation, club, association or legal representative, acting individually or jointly.

PORTION — Five percent of gross sales for any calendar year.

PRIVATE MODELING ESTABLISHMENT — Any establishment having a fixed place of business which has as its principal use or as an accessory use, a service of nude modeling or a service of modeling lingerie or similar clothing to an individual in a private room.

SEXUAL ACTIVITIES, SPECIFIED —

- A. Includes:
 - (1) Human genitals in a state of sexual stimulation or arousal.
 - (2) Acts of human masturbation, sexual intercourse or sodomy.
 - (3) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.
 - (4) **SADOMASOCHISTIC ABUSE** — Flagellation or torture by or upon a person who is nude or clad in undergarments or in a sexually revealing or bazaar costume; or the condition of such person be fettered,

§ 42-2 bound or otherwise physically restrained in an apparent act of sexual stimulation or gratification. § 42-2

- (5) SEXUAL EXCITEMENT — The facial expression, movements, utterances or other responses of a human male or female, whether alone or with others, whether clothed or not, who is in an apparent state of sexual stimulation or arousal or who experiences the physical or sensual reactions of humans engaging in or witnessing sexual conduct.

- B. The conduct described hereinabove in this definition is "sexual activity," whether or not it is engaged in alone or between members of the same sex, or between members of the opposite sex or between human and animal or between human and inanimate objects.

STEAM BATH ESTABLISHMENT — Any establishment which provides steam baths, hot tubs (whirlpools), saunas and similar facilities. This definition shall not be construed to include health clubs which have facilities for physical exercise, such as tennis courts, racquet ball courts or exercise rooms, and which have hot tubs (whirlpools), steam baths and/or saunas that are accessory to the health club or those bona fide medical or health services establishments which have accessory-use steam baths, hot tubs (whirlpools) or saunas for use in medical therapy.

§ 42-3. Restrictions.

In addition to other requirements of this chapter and the Code of the Town of Elma, adult uses shall be permitted subject to the following restrictions:

- A. No adult use shall be allowed within 1,000 feet of another existing adult use.
- B. No adult use shall be located within 1,000 feet of the boundaries of any district that is zoned for residential use.
- C. No such adult use shall be located within 2,000 feet of a preexisting school or place of worship.
- D. No adult use may be located in any zoning district except that which is zoned as industrial.
- E. Only one sign shall be permitted visible from the exterior of a building occupied by a regulated use, and such sign shall be no larger than 100 square feet, nor shall such sign consist of any material other than plain lettering. No sign shall have any photographic or artistic representation other than plain lettering whatsoever thereon.
- F. Exposure of materials through public view. No regulated use shall expose or cause to be exposed to public view, visible from the outside of the premises, any of the materials regulated by this chapter.

§ 42-4. Licensing and registration.

No person, firm, association, club, corporation or other entities shall lease, rent, maintain, operate, use or allow to be operated or used any business or establishment any part of which contains an adult use without first complying with the provisions of this section.

- A. In addition to all other required licenses and permits, no form of adult entertainment shall be permitted to operate until a certificate of registration is filed with the Town Clerk containing:
- (1) The name and address of the person, business or establishment subject to the provisions of this section. If the business is a partnership or corporation or a DBA (doing business as), then the names of the partners, the officers of the corporation, or the holder of the DBA and their respective addresses shall be filed.
 - (2) The address of the premises so regulated.
 - (3) The name and address of the owner(s) of the premises and the name and address of the beneficial owner(s) if the property is in a land trust.
 - (4) The name, business and home phone numbers of all those persons having substantial connection with the business or establishment, subject to the provisions of this section.
 - (5) The exact nature of the adult use.
 - (6) If the premises or the building in which the business containing adult use is located is leased or rented, a copy of said lease.
 - (7) If the establishment is a massage parlor or deals in any way with massage, then the application shall also contain the New York State certificate as a masseur or masseuse. This is a continuing requirement upon the employment of any new employees engaged in personal massage, and a certificate for any such new employees must be on file at the Town Clerk's office within five business days of their employment.
- B. Application for said permit shall be made through the Building Inspector's office on forms provided for that purpose and shall be accompanied by the fee determined by the Town Board. The Building Inspector shall examine said application and shall examine said building location and use for compliance with all New York State and local laws, including this chapter. Such inspections shall also include the usual inspection for compliance with the New York State Uniform Fire Prevention and Building Code and other local ordinances, resolutions, statutes and regulations. Upon completion of his initial inspection and examination, the Building Inspector shall refer the matter with any recommendations he may have as to safety, health conditions and security, to the Planning Board with notification to the Town Board. The Planning Board shall review the application for the same matters and shall provide a written recommendation to the Town Board within 60 days provided all information requested by the Planning Board of the applicant is received within 45 days. The Town board shall thereupon review the application with all supporting documentation and recommendations, if any, and shall accept the application, reject the application or accept the application with modifications. At any level of this process, any Town department may apply for assistance from outside agencies at the expense of the applicant, provided that the applicant is notified of the department's intention to request such assistance, the approximate cost of such assistance and the estimated time before such assistance can be provided. The applicant shall then affirmatively authorize said department to go forward with such request for outside assistance. Failure on the part of the applicant to provide said authorization, in writing, shall be deemed a withdrawal of the application if not provided within 10 days of the time that the Town provides the information necessary as to the assistance.
- C. If there occurs any change in the information required for the certificate of registration, the Town Clerk shall be notified of any changes and a new, amended certificate shall be filed within 10 days of such change.
- D. The processing fee for each certificate of registration or amendment thereto shall be as established from time

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to time by the Town Board.

- E. Certificates of registration shall, unless revoked, be valid from one year from the date of issuance; and a certificate of amendment shall be considered to terminate when the certificate which it amends terminates.
- F. All fees are nonrefundable.
- G. No certificate of registration or amendment issued under the provisions of this section shall be transferrable or assignable to any other person, business or establishment without the written permission of the Town Board, nor shall any certificate of registration or amendment be transferable for use at any other premises, building or location other than that so stated and set forth in the certificate of registration or amendment.
- H. All certificates of registration must be prominently and conspicuously displayed on the premises, building or location for which it is issued by the owner, manager, or agent of the adult use.
- I. Any intentional or knowingly made false statement or any statement which a registered business or applicant should reasonably have known to be false, which is provided in the certificate of registration or any document or information supplied therewith, shall be grounds for rejection, suspension or revocation of the certificate.
- J. Periodic inspections by authorized police, agencies or departments within the Town shall be made. Such inspections shall be reasonable as to the time and the manner of the same.

§ 42-5. Applicability.

This chapter shall apply to any person, firm, corporation, club, association or other entity which actually engages in the conduct of a regulated use under this chapter and shall further and equally apply to the owner of any building, structure or premises upon which regulated use is conducted. Any violation of this chapter shall subject both the person, firm, club, association, corporation or entity conducting such regulated use and the owner and tenant of the premises upon which such regulated use is conducted to the penalties provided herein.

§ 42-5

§ 42-6

§ 42-6. Revocation; hearing.

- A. The Town Board reserves the power to revoke without notice any certificate of registration or amendment issued under the provisions of this chapter at any time in cases in which such certificates were procured by false representation of facts or for the violation of or failure to comply with any provision of this chapter by any registrant, his servant, agent or employees. In case of such revocation, no portion of any fee for such certificate shall be refunded.
- B. After any revocation, the registrant, upon request, shall be entitled to a hearing before the Town Board not less than 10 days after such revocation nor more than 30 days afterwards. All such requests must be in writing and given to the Town Clerk, who will set a date for the hearing, giving the registrant 10 days' notice thereof.

§ 42-6

§ 42-7

§ 42-7. Penalties for offenses.

- A. Any person violating any of the provisions of this chapter shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding \$250 or by imprisonment for a term not exceeding 15 days, or by both such fine or imprisonment.
- B. The continuation of an offense under this chapter shall constitute, for each day the offense continues, a separate and distinct violation herein.

Chapter 43

ALARM SYSTEMS

§ 42-7

[HISTORY: Adopted by the Town Board of the Town of Elma 3-16-1994. Amendments noted where applicable.]

§ 42-7

GENERAL REFERENCES

Fire prevention — See Ch. 79.

§ 43-1. Purpose.

The purpose of this chapter is to protect and promote the health, safety and general welfare of the residents of the Town of Elma by reducing the number of avoidable alarms of fire, intrusion, holdup or other emergencies which contribute to ineffective utilization of police and fire emergency agencies, require emergency responses which are susceptible to high accident rates, interfere with genuine emergencies (responses) and produce unnecessary alarm noise to the surrounding community.

§ 43-2. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings as defined below:

ALARM SYSTEM — A device, whether singular or multiple units, or an assembly of equipment which is designed to detect smoke, abnormal rise in temperature, fire, medical emergency or an entry into or exit from a building, structure or facility, and by reason thereof emits audible response intended to alert persons outside of the premises and/or transmit a signal or message to an emergency agency either directly or through a private answering point.

AUTOMATIC DIALER — A device that automatically dials and relays a prerecorded message to an emergency agency.

EMERGENCY AGENCY — The police agency or fire company, central fire dispatch or other emergency dispatch center. **[Amended 10-19-2005]**

§ 43-2

§ 43-3

§ 43-3. Compliance required.

The owners and lessees of premises having alarm systems shall comply with all provisions of this chapter on or before the day of adoption, 1994.

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§ 43-4

§ 43-4. Automatic cutoff system required.

- A. No person shall install or maintain an external audible alarm device which does not contain an operational automatic cutoff system which turns off the external audible alarm after a period not to exceed 10 minutes.
- B. An automatic dialer connected directly to an emergency agency shall automatically disconnect and/or terminate its message after the message has been transmitted a maximum of two times. Notwithstanding the foregoing, however, the total transmission time of all messages shall not exceed five minutes.

§ 43-5. Avoidable alarms.

- A. The activation of an alarm system through mechanical failure, malfunction, improper installation, intentional act or the negligence of the owner, user, custodian or lessee of an alarm system or of his invitees or employees requiring an emergency response when in fact an emergency does not exist constitutes an avoidable alarm. An avoidable alarm also includes intentional activation of an alarm system when the activator knows an emergency situation does not exist.
- B. An avoidable alarm does not include alarms activated by violent conditions of nature or similar causes beyond the control of the user, owner or operator of the system. The activation of an alarm system under any circumstances in which the activator reasonably believes that an emergency situation exists shall not be deemed to be an avoidable alarm.

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§ 43-6

§ 43-6. Charges for avoidable alarms.

An owner or lessee of real property to which an emergency agency responds as a result of an avoidable alarm shall pay a fee for each such response in each calendar year as follows:

Emergency Service Response	
Avoidable Alarm Responses	Charge
1 to 2	No charge
3 to 5	\$50 each
6 and over	\$100 each

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§ 43-7. Notice of excessive use. [Amended 10-19-2005]

The owner or lessee of real property which received an emergency response by reason of an avoidable alarm shall be notified, in writing, by means of first-class mail of all avoidable alarms up to two police agency and/or fire alarms in a calendar year. The letter shall inform the owner or lessee of the times and types of emergency responses provided to the address location; the letter shall be forwarded to the address location and/or the last known residence and shall include a copy of the alarm code.

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§ 43-8

§ 43-8. Notice of violation and review.

The Building Inspector shall forward a letter of violation to the owner or lessee upon the occurrence of the third avoidable alarm and thereafter, indicating the applicable fine. To challenge the classification of an alarm as an avoidable alarm, the real property owner or lessee thereof shall, in writing, notify the Building Inspector within 20 days after receipt of notice of the avoidable alarm. Failure to give timely notice shall be deemed a waiver of the right to review the determination of avoidable alarm.

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§ 43-9

§ 43-9. Payment of charges. [Amended 10-19-2005]

Avoidable alarm fees or charges shall be paid to the Town Clerk of the Town of Elma at 1600 Bowen Road, Elma, New York 14059.

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§ 43-10

§ 43-10. Failure to remit fee.

Failure of a real property owner or lessee of property on which an alarm system is installed to pay the avoidable alarm charge within 30 days from notice of the amount due shall result in said owner or lessee being deemed served with a summons and shall be in violation with this chapter.

§ 43-10

§ 43-11

§ 43-11. Enforcement.

The Building Inspector shall enforce this chapter for alarm systems which detect medical emergencies and entry or exit from a building, structure or facility and for alarm systems which detect smoke, fire or abnormal rise in temperature.

§ 43-11

§ 43-12

§ 43-12. Penalties for offenses.

Any person, business, firm, corporation, partnership, association or other entity that does not pay the fee as established in this code or who violates any other provision of this code shall be subject to a civil penalty not to exceed \$1,000 for each offense. A separate offense shall be deemed committed upon each day during which a violation occurs, continues or is permitted.

Chapter 48

BINGO

§ 43-12

**[HISTORY: Adopted by the Town Board of the Town of Elma 4-10-1958 by Ord. No. 5.⁴ Amendments § 43-12
noted where applicable.]**

GENERAL REFERENCES

Games of chance — See Ch. 86.

4. Editor's Note: This ordinance was approved by the voters at a special election held 5-3-1958.

§ 48-1. Authorization for conduct of bingo. [Amended 9-4-1963]

It shall be lawful for an authorized organization, upon obtaining a license therefor as provided in Article 14-H of the General Municipal Law, to conduct the game of bingo within the territorial limits of the Town of Elma, as now or as they may be hereafter established, subject to the restrictions and provisions of:

- A. This chapter;
- B. Article 14-H of the General Municipal Law; and
- C. The State Lottery Control Law.

§ 48-2. Restrictions on conduct of bingo. [Amended 9-4-1963]

The following restrictions are placed upon the conduct of bingo games as hereby authorized:

- A. No person, firm, association, corporation or organization other than a licensee under the provisions of Article 14-H of the General Municipal Law shall conduct such game or shall lease or otherwise make available for conducting bingo a hall or other premises for any consideration whatsoever, direct or indirect.
- B. No bingo games shall be held, operated or conducted on or within any leased premises if rental under such lease is to be paid, wholly or partly, on the basis of a percentage of the receipts or net profits derived from the operation of such game.
- C. No authorized organization licensed under the provisions of Article 14-H of the General Municipal Law shall purchase or receive any supplies or equipment specifically designed or adapted for use in the conduct of bingo games from other than a supplier licensed under the Bingo Control Law or from another authorized organization.
- D. The entire net proceeds of any game of bingo and of any rental shall be exclusively devoted to the lawful purposes of the organization permitted to conduct the same.
- E. No prize shall exceed the sum or value of \$250 in any single game of bingo.
- F. No series of prizes on any one bingo occasion shall aggregate more than \$1,000.
- G. No person except a bona fide member of any such organization shall participate in the management or operation of such game.
- H. No person shall receive any remuneration for participating in the management or operation of any game of bingo.
- I. The unauthorized conduct of a bingo game and any willful violation of any provision of this chapter shall constitute and be punishable as a misdemeanor.

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§ 48-3. Investigation of applicants.

The Town Clerk of the Town of Elma shall cause to be investigated the qualifications of each applicant for a license and the merits of each application with due expedition after the filing of the application. The Town Clerk shall deliver to the Town Board the application, together with supporting documents therefor, and the report of the investigation and his determination as to whether or not the requisite conditions have been met by the applicant.

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§ 48-4. Issuance of license; fee.

If the Town Clerk shall determine that the requisite conditions have been met by the applicant and shall so advise the Town Board, the Town Board may direct the Town Clerk to issue a license to the applicant for the holding, operation and conduct of the specific kinds of games of chance applied for upon payment of a license fee or fees of \$10 for each occasion upon which any games of chance are to be conducted under the license, which fees are to be paid into the general funds of the Town of Elma.

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§ 48-5. Transmittal of certain fees to state. [Amended 6-3-1981]

On or before the 30th day of each month, the Supervisor of the Town of Elma shall transmit to the State Comptroller a sum equal to 50% of all commercial lessor license fees and the sum of \$7.50 per occasion of all license fees for the conduct of bingo collected by the Town pursuant to this chapter during the preceding calendar month.

Chapter 50
BIOSOLIDS

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**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

GENERAL REFERENCES

Dumps and dumping — See Ch. 68.

Solid waste — See Ch. 119.

Sewers — See Ch. 115.

ARTICLE I
Siting of Facilities; Aerobic Digestion
[Adopted 1-18-2017 by L.L. No. 1-2017]

§ 50-1. Title.

This article shall be known as and may be cited as the "Biosolids Law of the Town of Elma."

§ 50-2. Legislative findings and purposes.

A. The Town of Elma finds that:

- (1) Aerobic and anaerobic digestion facilities that take in waste from waste water treatment plants, industrial and chemical sources, municipal sources and septage, digestate storage facilities and land application facilities are by their very nature potentially dangerous to both the Town citizenry and to the Town's natural environment.
- (2) The potential contamination of soil, surface water, groundwater, nearby creeks and streams and the potential pollution of the air are threats which are posed by such operations. This potential contamination can pose a threat to the health, safety and welfare of persons and the environment, including the crops, livestock and wildlife exposed to such contamination.
- (3) The Town's existing community character may be adversely and unalterably impacted by the location and operation of such facilities within the Town in close proximity to water supplies, residences, schools, businesses and food processing facilities. Property values within the Town may be adversely affected with the expansion of such facilities.
- (4) Sewage sludge and digestate waste are deleterious substances; that improperly maintained and operated aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities can emit noxious fumes, aerosols and odors; that such facilities cast dust and particles containing contaminants upon neighboring persons, animals, crops and properties; that such facilities attract rodents, scavengers, birds, vermin, insects and other animals, which transport contaminants and pathogens and become breeding places therefor.
- (5) If not properly managed, sewage sludge and digestate waste can produce harmful liquids which drain off, over and into the soil; that certain sewage sludge and digestate waste may contribute to an increase in mortality or an increase in serious, irreversible or incapacitating illness; that sewage sludge and/or digestate wastes cause or significantly contribute to a substantial present or potential hazard to human health or the environment when improperly processed, stored or applied; that municipal sludge is a product of residential, commercial and industrial users and contains pathogens, hazardous chemicals and other substances from these users, some of which alone or in combination may be dangerous if not properly managed; that such substances may include; among other things, pesticides, pathogens (bacteria, viruses, protozoa and helminth ova), carcinogenic materials, irritants, organics, biologicals, pharmaceuticals, barium, fluoride, molybdenum, silver, cobalt, iron, lead, mercury, nickel, copper, tin, vanadium, zinc, cadmium, sulfur, and a host of other regulated and nonregulated deleterious and toxic substances; that the quality and contents of sewage sludge and digestate waste can vary greatly over time and location depending upon the nature of its sources and the compliance with disposal regulations for these and other hazardous substances.
- (6) Currently there exists a difference of opinion among experts as to whether it can be dangerous for humans to consume crops and livestock grown on land used for the processing, storage or application of municipal sludge or digestate waste or to drink milk or consume food products originating from land where sewage sludge and/or digestate waste has been improperly processed, stored or applied; that until more definitive information is available about the safety of sewage sludge and digestate waste, there is

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a need for careful management of valuable farmland where the sewage sludge or digestate waste may be processed, stored or applied.

- (7) The Town's manpower and financial resources are such that the Town would have serious difficulty regulating and monitoring the processing, storage or application of sewage sludge or digestate waste generated or originating outside of the Town while striving to effectively regulate and monitor that which is generated within the Town; that the inability of the Town to regulate and monitor the processing, storage or application of sewage sludge and digestate waste coming into the Town from outside sources could result in serious health problems for Town residents and environmental damage to property within and adjacent to the Town.
- (8) Operation of aerobic or anaerobic digestion facilities, digestate waste storage facilities and land application facilities in the Town could unavoidably and adversely affect the Town in a manner that imposes a heavy burden on its citizens which greatly outweighs any advantage of having sludge and/or waste processing, storage or application available and any economic benefit such private business may incur. Moreover, the operation of these facilities is a subject of legitimate public concern to the Town residents, making access to as much accurate and current information about the scope and effect of proposed and actual processing, storage and land application operations a necessity.
- (9) Based on the review of recent and respected academic articles, the current federal and state regulations of aerobic and anaerobic digestion facilities, digestate storage facilities and land application facilities are insufficient to address or relieve the foregoing concerns. Moreover, the regulations of the New York State Department of Environmental Conservation memorialized in Subpart 360.4 are based on federal rules first promulgated in 1992 at 40 CFR 503 ("EPA 503 Rule") which, in turn, regulate the loading of only a small list of target heavy metals and nutrients on agricultural soils and do not consider the reported findings regarding numerous other chemicals (such as pharmaceuticals and personal care products) found in biosolids which are not yet required by the New York State Department of Environmental Conservation to be tested for or evaluated despite their association with potential adverse environmental and health effects such as endocrine disruption, health impacts on livestock, movement to groundwater through facilitated transport, and other concerns.
- (10) Therefore, it is the duty and intent of the Town Board to protect the inhabitants of the Town of Elma through an exercise of its police powers by regulating the siting of aerobic or anaerobic digestion facilities, digestate waste storage facilities and land application facilities and by requiring a robust and prudent utilization of the Town's safety and health regulatory authority to ensure the continued well-being of the Town citizenry and to ensure that the environment will not be adversely affected when such facilities are situated within the Town of Elma, regardless of the district's designation under existing zoning ordinances.

B. It is the purpose of the Town by this article, to:

- (1) Regulate and restrict the operations of aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities within the Town of Elma in order to promote a safe, uncontaminated, hygienic, wholesome and attractive environment for the entire community.
- (2) Reduce the risk of pollution from aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities by restricting the scope and size of such activities.
- (3) Ensure that accurate and current information about proposed or actual aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities within the Town is available to public officials and citizens.
- (4) Protect the residents of the Town from undesirable effects of aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities, including:

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- (a) Potential and actual negative impacts, including, but not limited to, odors, dust, aerosols, and noise.
 - (b) Potential and actual deterioration in property values associated with adjacent or nearby operations of such facilities that may interfere with the orderly and safe development and operations of properties.
 - (c) Potential and actual injury to human health and the environment.
- (5) Exercise the Town's powers under the Municipal Home Rule Law, and the New York State Constitution, Article IX, § 2(c), and the Town Law for the physical and mental well-being, health and safety of its citizens and to regulate and restrict aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities pursuant to the specific authority of § 27-0711 of the Environmental Conservation Law and the Municipal Home Rule Law which authorizes towns to impose stricter controls on waste disposal operations than state law requires.
- (6) This article is intended to supplement and incorporate all applicable requirements of any federal, state or local laws, including, but not limited to, the Environmental Conservation Law⁵ and 6 NYCRR (including Subparts 360-4 and 360-5) into this article such that all information and documents required to be produced to any local, state and federal regulator must be produced to the Town as part of an application and operation permit of any facility hereunder. All requirements of federal and New York State law are incorporated herein by reference as requirements of this article and all persons must document and produce to the Town that it can satisfy these requirements, as well as the other requirements of this article, in order to be granted a permit and to maintain a permit with the Town of Elma. In the event of any inconsistency between this article and other applicable local, state or federal law, the most restrictive of such requirements shall apply and control.
- (7) This article is intended to regulate and does regulate aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities that utilize municipal, hospital, septage, sewage sludge, or industrial waste and does not regulate organic agricultural digesters that utilize agricultural waste but do not utilize municipal, hospital, septage, sewage sludge, or industrial waste.
- (8) This article is not intended to be violative of the Town Agricultural and Farmland Protection Plan, or the New York State Agriculture and Markets Law. **[Amended 3-21-2018 by L.L. No. 2-2018]**

§ 50-3. Definitions.

A. Unless indicated herein or unless the context shall otherwise require, the terms and words used in this article shall have the same meaning as those defined in Article 27 of the Environmental Conservation Law⁶ and regulations promulgated by the New York State Department of Environmental Conservation.

B. The following terms and words shall be defined as follows:

AEROBIC DIGESTION FACILITY — Any facility which accepts domestic sewage, manure, food waste, fats, oils, greases, sludges resulting from the treatment process at wastewater treatment plants (biosolids), energy crops, glycerin, or silage waste for the purpose of producing digestate waste in the presence of air.

AGRICULTURAL WASTE — Waste which includes both natural (organic) and nonnatural wastes produced on a farm through various farming activities, but does not include biosolids as defined herein.

AGRICULTURE — All activities conducted by a farmer on a farm to produce agricultural products and which are inherent and necessary to the operation of a farm and the on-farm production, processing and marketing of agricultural products, including, but not limited to, the collection, transportation, distribution, storage and land application of animal wastes; storage, transportation and use of equipment for tillage,

5. Editor's Note: See NY Envir Conser § 1-0101 et seq.

6. Editor's Note: See NY Envir Conser § 1-0101 et seq.

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planting, harvesting, irrigation, fertilization and pesticide application; storage and use of legally permitted fertilizers, limes and pesticides all in accordance with local, state and federal law and regulations and in accordance with manufacturers' instructions and warnings; storage, use and application of animal feed and foodstuffs; construction and use of farm structures and facilities for the storage of animal wastes, farm equipment, pesticides, fertilizers, agricultural products and livestock, for the sale of agricultural products and for the use of farm labor, as permitted by local and state building codes and regulations, including the construction and maintenance of fences.

AGRONOMIC RATE — The rate of the addition of nitrogen, phosphorus, potash and micronutrients designed to provide the amount of such constituents needed by the crop or vegetation grown on the land and to minimize the amount of such constituents that pass below the root zone of the crop or vegetation grown on the land to groundwater.

ANAEROBIC DIGESTION FACILITY — Any facility which accepts domestic sewage, manure, food waste, fats, oils, greases, sludges resulting from the treatment process at wastewater treatment plants (biosolids), energy crops, glycerin, or silage waste for the purpose of producing biogas and digestate waste in the absence of air.

BEDROCK — Cemented and consolidated earth materials exposed on the earth's surface or underlying unconsolidated earth materials.

BIOSOLID WASTE (also known as "BIOSOLIDS") — Human sewage sludge and/or other solid waste that has been treated as part of the aerobic and/or anaerobic digestion process and meets local, state and federal standards for beneficial land application.

CERTIFIED APPRAISAL — A valuation of property, certified by a duly licensed New York State appraiser, which determines the fair market value of property in accordance with all relevant professional criteria on the date of the permit application or other required filing.

CUMULATIVE LOADING LIMIT — The maximum amount of metal, in pounds, that can be applied from biosolids to an acre of land.

DEC — The New York State Department of Environmental Conservation.

DIGESTATE WASTE (also known as "BIOSOLIDS") — Biosolid waste in liquid, semisolid or solid form and which is a by-product of the aerobic or anaerobic digestion process and meets local, state and federal standards for beneficial land application.

DISPOSAL — The deposit, discharge, distribution, dumping, injection, leaking, placing, applying, removal, spilling, spreading, storage, or transportation of any digestate waste into or on any land or water.

DOMESTIC SEWAGE — Any mixture of domestic sewage, regardless of source or origin, or other waste that passes through a sewer system to a publicly owned treatment works for treatment, including the contents of holding tanks, portable toilets and septic systems.

DRY WEIGHT BASIS — Calculated on the basis of having been dried at 105° C. until reaching a constant mass (i.e., essentially 100% solids content).

FACILITY — All contiguous land and structures or other improvements used for aerobic or anaerobic digestion, digestate waste storage or and application. Each such facility located on noncontiguous parcels of land shall constitute a separate facility.

FEED CROP — A cultivated plant or agricultural produce that is used as a source of nourishment for farm animals.

FIBER CROP — A cultivated plant or agricultural produce that is used for the manufacturing of paper, cloth or rope.

FOOD CROP — A cultivated plant or agricultural produce that is used as a source of nourishment for human beings.

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INDUSTRIAL WASTE — Solid waste generated by manufacturing or industrial processes. Such processes may include, but are not limited to, the following: electric power generation; fertilizer/agricultural chemicals; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. The forms of such wastes are exemplified by but not limited to: liquids such as acids, alkalis, caustics, leachate, petroleum (and its derivatives), and processes or treatment wastewaters; sludges which are semisolid substances resulting from process or treatment operations or residues from storage or use of liquids; solidified chemicals, paints or pigments; and dredge spoil generated by manufacturing or industrial processes, foundry sand, and the end or by-products of incineration or other forms of combustion. This term includes oil or gas drilling, production, and treatment wastes (such as brines, oil, and frac fluids); overburden, spoil, or tailings resulting from mining; or solution mining brine and insoluble component wastes. This term shall not include agricultural food waste or vegetable oils, fats and greases from agricultural food processing facilities.

LAND APPLICATION FACILITY — A facility used for the storage or disposal of digestate waste from a solid waste management facility for agricultural use of biosolids, waste, sludge, and other permitted land-applied solid wastes to the soil surface or injected into the upper layer of the soil as defined under the solid waste management regulations in 6 NYCRR 360.4 and elsewhere.

LEACHATE — A liquid, including any suspended components in the liquid, which has been in contact with or passed through solid waste.

NYCRR — New York Codes, Rules and Regulations, as they exist upon the effective date of this chapter and as may thereafter be amended.

OPERATOR — The person responsible for the operation of a solid waste management facility.

OWNER — The person who owns all or any part of the real property and/or improvements upon which an aerobic or anaerobic digestion facility, digestate waste storage facility, or land application facility is operated.

PATHOGENIC ORGANISMS — Disease-causing organisms, including, but not limited to, certain bacteria, viruses, protozoa and viable helminth ova.

PERSON — Any individual, partnership, firm, association, business, industry, enterprise, public or private corporation, political subdivision of the state, government agency, municipality, estate, trust or any other legal entity whatsoever.

RUNOFF — Any rainwater, leachate or other liquid that drains over land from any part of a facility.

SEPTAGE — The contents of a septic tank, cesspool or other individual sewage treatment facility which receives domestic sewage wastes. Septage is a form of sewage sludge.

SEWAGE SLUDGE — Any solid, semisolid or liquid waste generated or disposed from a commercial, industrial, municipal, public or private wastewater treatment plant, water supply treatment plant, air pollution control facility, or sewage treatment plant.

SITING AND OPERATING PERMIT — The permit issued by the Town which allows for the siting, construction, expansion, modification or operation of an aerobic or anaerobic digestion facility, digestate waste storage facility or land application facility within any zoning and/or use district within the Town of Elma.

SOLID WASTE — All putrescible and nonputrescible materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including, but not limited to, garbage, refuse, industrial or commercial waste, biosolid waste and digestate, sludges from sewer or water-control facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris.

SOLID WASTE MANAGEMENT — The purposeful and systematic transportation, storage, processing,

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recovery and disposal of solid waste.

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SOLID WASTE MANAGEMENT FACILITY — Any facility employed beyond the initial solid waste collection process, including, but not limited to, transfer stations; baling facilities; aerobic or anaerobic digestion facilities and associated storage facilities; land application facilities; treatment facilities; rail haul or barge haul facilities; processing facilities, including resource recovery equipment or other facilities to reduce or alter the volume, chemical or physical characteristics of solid waste; sanitary landfills; plants and facilities for composting, compacting or pyrolyzation of solid wastes; incinerators; burial facilities; industrial waste processing, medical waste processing, or waste disposal facilities; storage areas associated with any of the foregoing; and storage lagoons for sanitary landfills.

STORAGE — The containment of any solid waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such waste.

SURFACE WATER — Lakes, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, and all other bodies of surface water, natural or artificial, public or private.

TOWN — The Town of Elma. Whenever this chapter refers to any action which is to be taken or authorized by the "Town," the provisions shall be deemed to refer to the Town Board unless otherwise specified.

TRANSFER STATION — A combination of structures, machinery or devices at a place or facility where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility.

TREATMENT — Any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any solid waste to neutralize such waste, recover energy or material resources from the waste, to render such waste safer to transport, store or dispose of, or amenable for recovery, storage or reduction in volume.

UNTREATED SOLIDS — The organic materials in biosolids that have not been treated in either an aerobic or anaerobic treatment process.

VECTOR ATTRACTION — The characteristic of certain solid waste that attracts rodents, flies, mosquitos, or other organisms capable of transporting infectious agents.

WASTE-TO-ENERGY FACILITY — Any industrial waste or solid waste disposal operation, recycling operation, sanitary landfill, and aerobic or anaerobic digestion facility.

§ 50-4. Coordination with other laws.

All relevant sections of Article 27 of the New York State Environmental Conservation Law, Titles 6 and 7 of NYCRR (including, but not limited to, 6 NYCRR 360.4 and 360.5), the Clean Water Act, 33 U.S.C. § 1251 et seq., the Resource Conservation and Recovery Act⁷, 40 U.S.C. § 6901 et seq., and 40 CFR Part 503, as each is amended from time to time, are deemed to be included within and as part of this article, and any violation thereof shall be considered to constitute a violation of this article. Nothing contained herein shall be construed as changing, modifying or amending the Town's Zoning Law,⁸ and all requirements shall be construed as being in addition thereto and by virtue of the power granted to the Town under the Town Law.⁹

§ 50-5. Permit requirements; exemptions.

- A. No person shall site, construct, modify, expand, or operate an aerobic or anaerobic digestion facility, digestate waste storage facility, or application facility without a siting and operating permit issued by the Town Board pursuant to the provisions of this article and all incorporated applicable local, state and federal laws and regulations. Prior to any siting, construction, modification, expansion or operation of any such facility, a siting

7. Editor's Note: See the Resource Recovery Policy Act, NY Envir Conser § 27-0101 et seq.

8. Editor's Note: See Ch. 144, Zoning.

9. Editor's Note: See NY Town § 1 et seq.

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and operating permit shall be required, following a public hearing.

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- B. The term or period of any such permit shall be determined by the Town Board utilizing the criteria set forth in this article, but shall be no less than one year and no more than a three-year period.
- C. No permit issued pursuant to the provisions of this article shall be transferable to any other person, firm or corporation unless the original permit clearly provides otherwise.
- D. Exemptions. The following facilities are exempt from this chapter:
 - (1) The exemptions listed in 6 NYCRR 360.4.2(a).

§ 50-6. Permit application procedures.

- A. Existing aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities.
 - (1) The owner or operator of any aerobic or anaerobic digestion facility, digestate waste storage facility or land application facility which is operative in the Town as of the effective date of this article shall submit an application for a siting and operating permit within:
 - (a) Four years after the effective date of this article; or
 - (b) Six months before the expiration of its current permit, whichever is sooner.
 - (2) A complete application for existing facilities which is timely submitted shall be deemed a valid siting and operating permit until such application is acted upon. If a submitted application is deemed incomplete by the Town Board, the subject applicant shall be notified in writing of such defect and shall be given an additional period of 30 days to complete the application. Failure to do so within such thirty-day extension period shall result in automatic denial of the application.
 - (3) If the permit applicant's activity or business of an existing facility presently complies with the requirements required to secure a permit in the first instance, then the applicant shall be issued a permit therefor if the applicant meets the other requirements contained herein. If the applicant's activity or business does not comply with the requirements a person must meet to secure a permit in the first instance, the applicant may, at the Town's sole discretion, be granted a temporary permit for up to one year, during which time the applicant must arrange the activity or business so that it does then comply with the requirements a person must meet to secure a permit in the first instance. If, at the end of such extension, such person has not so arranged his activity or business to comply with the requirements in this chapter, then the applicant shall forthwith cease and desist engaging in or conducting the same and shall remove from such place any materials of the nature described herein.
 - (4) In addition to the application content requirements hereinafter enumerated, all applications submitted under this subsection shall also include:
 - (a) All information and documents required under local, state or federal law, including, but not limited to, Article 27 of the Environmental Conservation Law¹⁰ and 6 NYCRR 360.4 and 360.5 (which are incorporated by reference) which shall be submitted to the Town and approval by the Town as part of an application for a permit under this article. In the event of any inconsistency between this article and New York State law, the stricter requirement shall apply.
 - (b) A detailed report describing the plan of operation [including, but not limited to, anticipated volume(s) of waste involved, anticipated method of treatment of waste, method(s) of transport, frequency of operation(s), source(s) of waste involved, and relevant time period(s)], and a

10. Editor's Note: See NY Envir Conser § 1-0101 et seq.

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contingency plan setting forth in detail a proposal for temporary and/or permanent corrective or remedial actions to be taken [and the timing of said action(s)] in the short term and the long term in the event of equipment breakdowns, soil, groundwater, surface water or air contamination resulting from the facility's operation, fires, spills, and unpermitted releases of waste materials to the environment.

- (c) A detailed description of pathogen content (certified by a licensed New York State testing laboratory) (tested at least twice annually); an MSDS of the wastes(s) involved (if available); and a plan for pathogen treatment and/or pathogen reduction of the source material for the facility to meet levels required to be implemented before land application under this article.
- (d) A detailed plan for vector control and vector attraction reduction proposed to be implemented before and after land application.
- (e) A waste management plan and nutrient management plan, as appropriate, detailing solid waste content information [both "baseline" (certified by a qualified New York State licensed testing laboratory) and proposed after application], waste management practices for all waste, treatment alternatives considered and available, storage plans, storm soil and groundwater sampling and analysis plans, waste application plans (including monitoring and reporting), and contingency plans.
- (f) If the person conducting such activity or business is not the sole owner thereof, the applicant shall state such fact and the details of ownership, duration of ownership, insurance, proposed time(s) of operation and financial condition and viability at the time the applicant applies for the temporary permit, and the Town Clerk at the time of issuing such temporary permit shall send the owners or each of them a notice of the issuance of such temporary permit to each such person, together with a copy of this chapter.

B. Proposed aerobic or anaerobic digestion facilities, digestate waste storage facilities and land application facilities; and expansion and modification to existing facilities.

- (1) Any person who proposes to site, construct or operate an aerobic or anaerobic digestion facility, digestate waste storage facility or a land application facility in any zoning district of the Town or who proposes to site, construct, expand, modify or operate any phase of any existing such facility, shall submit a complete application for a siting and operation permit to a duly authorized agent of the Town. The proposed date to commence any such siting, construction, modification, expansion or operation cannot occur less than 90 days after the date of receipt and acknowledgement of the application by the Town. No such activities shall take place without prior Town Board review and approval pursuant to the procedures set forth in § 50-8 herein. The following acts are deemed to be modifications and expansions which require permits:
 - (a) Increase of the facility operation by acquisition, purchase, lease or otherwise of additional land which was not the subject of or included in any prior application submitted under this article.
 - (b) Increase in the total quantity of waste received during any quarter at the facility by 20% or more over the total quantity of waste received during the comparable quarter of the preceding year (except where such increase is not in excess of the previously approved operating capacity of such facility for such time period), or where there has been a material change in the type, kind or quantity of waste previously approved.
 - (c) Movement of aerobic or anaerobic digestion operations, digestate waste storage operations, or land disposal operations to a portion of property already owned, leased or otherwise held by the facility which was not the subject of any operation included in any prior application submitted and approved under this article.

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- (d) Expansion of the facility operation by the installation of additional processing equipment which increases the design capacity of the facility or which changes the facility process, or where such expansion or construction increases the height of an existing facility or increases the outside dimensions of the facility.
- (2) In addition to the application content requirements hereinafter enumerated in § 50-7, all applications submitted under this subsection shall also include the following:
 - (a) All information and documents required under local, state and federal law (including, but not limited to, Article 27 of the Environmental Conservation Law¹¹ and 6 NYCRR 360.4 and 360.5) (incorporated by reference), which must be provided to the Town and approved by the Town as part of any application for a permit under this article. In the event of inconsistency between this article and New York State law, the more restrictive shall apply.
 - (b) As applicable, a detailed engineering plan, stamped and sealed, and specifications reflecting the proposed siting, construction, expansion, modification or operation.
 - (c) A detailed description of pathogen content (certified by a New York State licensed testing laboratory) and a detailed plan for pathogen treatment and/or pathogen reduction to be implemented before land application.
 - (d) A detailed plan for vector control and/or vector attraction reduction to be implemented before and after land application.
 - (e) A waste management plan detailing solids and waste content information, proposed waste management practices for all waste treatment alternatives considered and available, storage plans, soil and groundwater sampling and analysis plans, planned application quantities and rates, monitoring and reporting plans, and contingency plans.
 - (f) A nutrient management plan submitted to establish estimated waste quantities and waste application rates based on soil characteristics, sludge characteristics, nutrient loading, and potential or planned crop growth.
 - (g) A detailed report describing a plan of operation and a contingency plan setting forth, in detail, a proposal for corrective or remedial action to be taken in the event of equipment breakdowns and soil, groundwater, surface water or air contamination resulting from the facility's operation, fires, spills, and unpermitted releases of waste materials to the environment.
 - (h) Evidence of compliance with all Town ordinances; Public Service Law;¹² the New York State Agriculture and Markets Law¹³ regulating agricultural activity; the Environmental Conservation Law¹⁴ of the State of New York; 40 U.S.C.; local, state and federal wetlands and flood control laws; and the respective regulations thereunder.

§ 50-7. Permit application contents and permitting fees.

- A. All applications for a permit for the siting, construction, modification, expansion or operation of a facility shall include an application to the Town Board upon a form prescribed by said Town Board.
- B. The applications shall be accompanied by any other data the Town Board reasonably requires to determine the feasibility of issuance or denial of a permit, including all information and documents required under state

11. Editor's Note: See NY Envir Conser § 1-0101 et seq.

12. Editor's Note: See NY Pub Serv § 1 et seq.

13. Editor's Note: See NY Agri & Mkts § 1 et seq.

14. Editor's Note: See NY Envir Conser § 1-0101 et seq.

§ 50-7 and federal law, including, but not limited to, Article 27 of the Environmental Conservation Law and 6 NYCRR 360.4 and 360.5; and such information and documents as may be required by the New York State Environmental Quality Review Act (SEQRA)¹⁵

C. All applications shall contain the following:

- (1) The full name of the person seeking a permit and whether that person is an individual, corporation, partnership, joint venture, or other legal entity; if the applicant is not an individual, the application shall set forth the names of all parent corporations, shareholders, partners, joint ventures, or other beneficial owners of the entity seeking a permit, unless the applicant is a publicly held corporation, and the names of all officers of an applicant that is a corporation, and officers and shareholders of any parent corporations.
- (2) Whether the applicant has ever been convicted of a felony or misdemeanor.
- (3) A description of the exact type of business the applicant intends to conduct, including the nature of the materials to be handled and wastes to be generated, including any applicable MSDS information.
- (4) Each application shall contain an emergency contact telephone number for the property owner and facility operator (updated annually).
- (5) Engineering plans (sealed and stamped), reports and specification prepared by a person or firm registered to practice professional engineering in the State of New York.
- (6) The location of all boundaries certified by a person or firm legally qualified to practice land surveying in New York State. If the boundaries of the area under permit do not change, the original survey obtained may be utilized for any permit renewal within 10 years of the original survey.
- (7) The applicant shall provide in his application a soil map from the Natural Resource Conservation Service (United States Department of Agriculture), hydrogeological report (including groundwater depth during the various times of the year), survey of area drainage and proposed location of monitoring wells.
 - (a) Baseline and annual analytical testing (consistent with Erie County Health Department Standards and certified by a qualified New York State licensed laboratory) of representative domestic/private water wells (if accessible by permission of the property owner upon which each such well is located, which permission shall be sought) upgradient, downgradient and on a lateral gradient from the facility for constituents set forth in this article and any other constituents of concern to the Town, as identified during the permitting process, and a demonstration that the facility has satisfied all applicable standards of operation as enumerated in the Environmental Conservation Law of the State of New York¹⁶ and regulations thereunder, by demonstrating specific means for meeting such standards, unless:
 - [1] A reasonable schedule of specified actions, with interim and final attainment dates, for achieving compliance with the dictates of this article, 6 NYCRR 360 (including, but not limited to, 360.4 and 360.5), and 40 U.S.C. and the Code of Federal Regulations, is submitted to the Town Board within 30 days of notification by the Town Board that such a schedule is required; and provided further that such schedule is approved by the Town Board; or
 - [2] A variance has been granted pursuant to Town Law.¹⁷

- (8) A proposed detailed plan for the closure of the facility compliant with state and federal law to be

15. Editor's Note: See NY Envir Conser § 8-0101 et seq.

16. Editor's Note: See NY Envir Conser § 1-0101 et seq.

17. Editor's Note: See NY Town § 1 et seq.

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implemented when use of the facility or the useful life of the facility permanently terminates.

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- (9) A proposed plan for the monitoring of all activities on each parcel of the facility by personnel of the Town of Elma or persons authorized by the Town of Elma whereby such monitoring personnel or persons shall be allowed access to the facility at regular stated times and also any other time deemed necessary by the Town Engineer, Code Enforcement Officer or the Town's consulting engineers, or other qualified person approved by the Town.
- (10) All methods and actions to be utilized are to satisfy the dictates of all applicable standards of design and operations, as enumerated or incorporated in this article and/or by 6 NYCRR (including, but not limited to Subparts 360.4 and 360.5) (which are incorporated herein). In the event of inconsistency between this article and New York State law, the more restrictive shall apply. Results shall be submitted to the Town simultaneously with any submission or production to any other local, state or federal regulatory agency. The applicant promptly shall submit to the Town, with the application thereafter during the period of the permit, a copy of all correspondence regarding the facility between the landowner and/or applicant/permittee and/or any applicable federal, state or local regulatory agency and a copy of all applicable federal, state and local permits or permit applications or any correspondence or filings related thereto.
- (11) In the application, the applicant shall agree that if granted the permit applied for, the applicant will conduct the activity or business pursuant to this article and other local, state or federal law as the regulations set forth herein and that, upon his failure to do so, such permit may be revoked forthwith.
- (12) If the person conducting such activity or business is not the sole owner thereof, the applicant shall state such fact at the time the applicant applies for the permit, and the Town Clerk at the time of issuing such permit shall send the owners or each of them a notice of the issuance of such permit to such person, together with a copy of this chapter.
- (13) In the case of an aerobic or anaerobic digestion facility, digestate storage facility or land application facility, there shall be submitted, where relevant and in addition to the above requirements, a waste management plan and a nutrient management plan and reports as required in 6 NYCRR 360.4 and 360.5 detailing material data on the solids and waste to be applied, a solids or biosolids management plan, treatment alternatives considered, a storage plan, an application plan (including monitoring and reporting), and contingency plans. The applicant shall also provide a detailed description of pathogen content (certified by a New York State licensed testing laboratory), a plan for pathogen treatment and/or pathogen reduction to be implemented before land application, as well as a detailed plan for vector control and/or vector attraction reduction to be implemented before and after land application.
- (14) All applications shall be accompanied by evidence of authority to sign the application and shall be signed as follows:
 - (a) Corporation: by a duly authorized principal executive officer of at least the level of vice president, accompanied by a certified copy of the authorizing corporate resolution;
 - (b) Partnership: by a general partner; or
 - (c) Sole proprietorship: by the proprietor.
- (15) Applications shall be sworn to, by or on behalf of the applicant in respect to all statements of fact therein or shall bear an executed statement by or on behalf of the applicant, pursuant to the New York State Penal Law § 210.45, to the effect that false statements made therein are made under penalty of perjury.
- (16) Fees and expenses.
 - (a) Each permit application shall be accompanied by a permit application fee of:

[1] In the case of a land application permit, \$500; and

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[2] In the case of a storage permit, \$2,500.

- (b) Throughout the permitting process and during the life of any permit, the applicant shall also be responsible for and shall promptly pay all costs and expenses reasonably incurred by the Town to review and process the application, to comply with this article, and as provided under the Environmental Quality Review Act (SEQRA)¹⁸ and regulations promulgated thereunder.
- (17) In addition to the application fee provided above and the cost of SEQRA compliance, the applicant shall acknowledge and be responsible for the costs and expenses incurred by the Town and/or the applicant or permittee for the testing and analysis of materials deposited in or placed upon any facility, or of any soils, or any surface or groundwaters on or adjacent to said facility during the permitting process and during the life of any permit granted under this article. Such tests shall be conducted at laboratories or facilities approved by the State of New York and the Town Board.
- (18) Each applicant shall demonstrate that the facility will not have adverse impact upon the environment of the Town of Elma, the health and safety of Town residents, businesses, and visitors, and local land use and planning, and the Town Board, Planning Board and Conservation Advisory Board shall approve an application only after careful consideration of the above criteria and requirements.

§ 50-8. Town Board action.

A. Consultations.

- (1) Upon determination by the Code Enforcement Officer that an application under this article is complete, the Town Board shall refer the complete application to the Town Planning Board and/or Conservation Advisory Board for study and recommendations upon receipt of said complete application, and each shall report to the Town Board within 90 days of such referral.
- (2) In addition, the Town Board may in its discretion refer the application to the county, regional or state agencies and to private engineers and consultants for their review and comment, and may also require additional tests or environmental studies, which shall be paid for by the applicant, to assist the Town Board in evaluating the proposed action. In conjunction with the consideration of any permit required under this article, the Town shall contemporaneously conduct any proceeding required by Article 8 of the Environmental Conservation Law.
- (3) When determining the feasibility of issuing town permits for a proposed aerobic or anaerobic digestion facility, digestate waste storage facility or land application facility or the proposed modification or expansion of any such existing facility, the Town Board shall not issue said permit unless the submitted engineering data and construction plans have been approved by the Town Engineer, Code Enforcement Officer or the Town's consulting engineers and after the Town Board and the applicant have complied with the dictates of the Environmental Quality Review Act of the State of New York (SEQRA).

- B. Scheduling of public hearing. Within 60 days of receiving recommendations from the Town Planning Board and/or the Conservation Advisory Board pursuant to this chapter, the Town Board shall hold a public hearing. The Town Board may schedule additional public hearings if it chooses.
- C. Advertisement of public hearing. The time and place of the public hearing shall be advertised in the official paper of the Town at least 20 days prior to the date of the hearing. The Town Board may also post the site of the proposed action and use other means to advertise the public hearing.
- D. Decision. Within 60 days after the final public hearing or such longer period as may be agreed upon, in writing, by said Town Board and applicant, the Town Board shall render its decision: approval, approval with modification and/or conditions, or disapproval. If an application is disapproved, the Town Board shall notify

18. Editor's Note: See NY Envir Conser § 8-0101 et seq.

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the applicant of such decision and state, in writing, its reasons therefor.

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E. Criteria for decision. The Town Board, in rendering its decision, shall consider the following:

- (1) The overall impact of the proposed action on the environmental conditions and on human health and safety within the Town and the surrounding community.
- (2) With regard to nonagricultural digesters and storage facilities, the adequacy, type and arrangement of trees, shrubs, and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
- (3) Protection of on-site and nearby soils, and surface and groundwaters from contamination in violation of this article.
- (4) Protection against airborne dust or aerosols containing the parameters listed in § 50-15A(8)(a) below.
- (5) Protection of residents and neighboring properties against contamination or other objectionable features in violation of this article.
- (6) Adequacy of the proposed plans for emergency, corrective or remedial actions.
- (7) Existing facilities. Within four years of the effective date of this article or six months before the expiration of its existing permit (whichever is shorter), a permit shall be issued for an aerobic or anaerobic digestion facility, digestate waste storage facility or land application facility in operation as of the effective date of this article, only if it has been demonstrated that said facility has complied with the standards of operation as set forth in the Environmental Conservation Law¹⁹ and other New York State law, 6 NYCRR (including, but not limited to, Subparts 360.4 and 360.5), 40 U.S.C. and 40 CFR Part 503, and this article and all Town laws; otherwise, such permit shall be denied and the facility shall thereafter accept no new waste but shall have 90 days to cease operations and complete restorative measures.
- (8) Proposed facilities. A permit shall be issued for a proposed aerobic or anaerobic digestion facility, digestate waste storage facility, or land application facility only if the proposed construction thereof is demonstrated to be in accordance with the standards of operation as set forth in the Environmental Conservation Law and other New York State law, 6 NYCRR (including, but not limited to, Subparts 360.4 and 360.5), 40 U.S.C. and 40 CFR Part 503, and this article and all Town laws; otherwise, such permit shall be denied.

§ 50-9. Bonds and insurance.

- A. As a condition of the issuance of any permit under this article, the Town shall require the following bonds or insurance issued by a bonding, surety or insurance company acceptable to and in an amount sufficient to reimburse the Town against any damages or expenses incurred by the Town in enforcing this chapter or in remedying any violation thereof, including, but not limited to, the following:
- (1) Performance bond to ensure proper performance of the siting and operation of the facility pursuant to the details of the application, the dictates of this article and all other local, state and federal laws.
 - (2) Restoration bond to ensure that all restoration and/or remediation work is completed pursuant to the plan submitted with the application, the dictates of this article and all other local, state and federal laws.
 - (3) Penalty bond to ensure that all fines and penalties levied and judgments secured pursuant to this article or other local, state and federal laws are promptly tendered and satisfied.

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- B. In determining the minimum amount of such bond and/or undertaking, the Town shall determine the amount of such undertaking having due regard for the size of the facility and the amount of aerobic or anaerobic digestion waste or digestate waste being received, deposited, processed, treated, stored or applied therein; but it shall not be less than the greater of: \$1,000,000, or three times the total fair market value of the land (as determined by certified appraisal) upon which the facility is located as shown on the current assessment roll of the Town. Said undertaking shall be kept in full force and effect at all times.
- C. Proof of liability insurance covering injuries to person and property with a minimum coverage limit of at least \$2,000,000 per occurrence. The Town reserves the right to require that it be named as an insured on any policy required hereunder.
- D. The terms and conditions of all such bonds shall be clearly set forth in detail on the permit, including the amounts of such bonds and insurance.

§ 50-10. Reissuance of permits or extension of facilities.

- A. Any permit holder who intends to continue siting, construction, modification, expansion or operations beyond the period of time permitted in such original permit must file for reissuance of such permit at least six months prior to its expiration. Filing for reissuance shall be made by the permit holder on a form prescribed by resolution of the Town Board and available from the Town Clerk or, if no such forms are prescribed, then on the same form as was previously filed. The provisions of this article relative to submittal and processing of initial applications shall apply to reissuance applications under this section.
- B. Upon review of a request for reissuance, the Town Board shall determine whether the application is in compliance with or has substantially complied with all terms, conditions and requirements of the expiring permit of this article and all local, state and federal laws, and all regulations thereunder:
 - (1) When the Town Board, after a public hearing, determines in the affirmative, the permit may be reissued.
 - (2) When the Town Board determines in the negative or if other circumstances exist which indicate noncompliance with any provisions of this article or original permit, the Town Board shall take appropriate action to secure compliance, including, but not limited to, a denial of reissuance.

§ 50-11. Modification, suspension and revocation of permit.

- A. If the continuation of a permit may result in injury to any person or the environment, any permit issued pursuant to this article shall be modified, suspended or revoked, in whole or part, during its term, upon a minimum of 10 days' notice and opportunity for a hearing, for cause, including, but not limited to, the following:
 - (1) Violation of any part of this article, the terms of a permit issued pursuant to this article or other local, state or federal laws or any regulations thereunder;
 - (2) The Town Board shall also consider any previous violations of this article, any local, state or federal law; or the terms of any permit;
 - (3) Obtaining a permit by misrepresentation or failure to fully disclose all relevant facts; or by making materially false or inaccurate statements or information in any application for a permit; or
 - (4) The continuation of such permit would not be in the interest of the health, safety and welfare of the residents, businesses or other persons of the Town of Elma.
- B. In the case where, in the Town Board's judgment, the continuation of a permit pursuant to this article would result in immediate and irreparable injury to the Town, any person or the environment, any permit issued pursuant to this article may be modified, suspended or revoked upon less than 10 days' notice by application to a court or tribunal of competent jurisdiction.

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C. The Town Board may revise or modify the terms of an issued permit if it determines good cause exists for such revision.

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§ 50-12. Penalties for offenses.

- A. Any person who violates any provision of this chapter or any permit issued hereunder, including, but not limited to, a false statement or exhibit submitted as part of an application to site, construct, expand, modify or operate a facility, shall: have its permit revoked and be barred from reapplying for a permit for at least three years; and be guilty of a violation and shall be punishable by a fine of up to \$250 or up to 15 days in jail, or both. Each day of continued violation shall be deemed a separate violation of this chapter.
- B. This chapter may be enforced by the Code Enforcement Officer of the Town. Any such enforcement official is authorized to issue an appearance ticket, any information, or any other appropriate accusatory instrument, in the manner provided by any pertinent ordinances or local laws of the Town, to the owner or operator of the facility as well as to any other person who is violating the provisions of this article.
- C. Civil remedies. Nothing in this chapter shall be deemed to impair or diminish any cause of action or remedy which the Town or any other person may have under any other local law, under any statute, ordinance or regulation or under local, state or federal statutory or common law; provided, however, that, in the case of a conflict, those terms or rules of law shall control which are the most restrictive upon the facility. In addition thereto, the Town may enforce this chapter by court injunction.
- D. Liability for expenses. Any person adjudged in a criminal or civil proceeding to have violated this chapter shall be liable to the Town for all expenses incurred by the Town in connection with the proceeding, including the reasonable attorneys' fees and expenses of the Town in connection therewith.

§ 50-13. Agent for the Town.

The Town Board may hire a person with suitable qualifications approved by the Town as the on-site agent for the Town of Elma at the applicant's expense. Said agent shall have the following duties:

- A. To monitor the facility and determine whether an operator is complying with this article, all siting and operating permits and zoning requirements and the requirements of all Town laws and ordinances.
- B. To inspect, to test, and/or have tested all waste received, treated, processed, stored, applied or placed upon any facility, or to test any soils, surface waters or groundwaters at or adjacent to said facility and report on his or her findings to the Town Board at such times as the Town Board requires regarding the operation of the facility, which reporting shall occur at least one time per year.

§ 50-14. Regulations.

- A. The permittee must personally manage or be responsible for the management of the activity or business for which the permit is granted.
- B. The Town Board, members of the Erie County Sheriff's office, members of the New York State Police, the Code Enforcement Officer, any governmental agencies with jurisdiction over the permitted activity, and any person or persons appointed by the Town Board shall be granted access to the area of activity or business of the permittee at all reasonable hours to inspect the same and test or inspect for compliance herewith.
- C. The permittee shall file with the Town Clerk, on the yearly renewal date, documentation that the permittee's employees have been trained to perform the permitted activities, and its compliance with this article and the laws of the State of New York, including, but not limited to, 6 NYCRR Subparts 360.4 and 360.5.
- D. The permittee shall file with the Town Clerk, on the annual renewal date, a list of the employees authorized to perform the permitted activities.

§ 50-15. Special conditions.

A. Sewage sludge and/or digestate waste processing, treatment, storage, discharge, disposal, and land application; operational requirements. The following requirements shall apply:

- (1) All land application facilities shall comply with all applicable requirements of 6 NYCRR Subparts 360.4 and 360.5 (which are incorporated by reference herein). In the event of inconsistency between this article and New York State law, the more restrictive shall apply.
- (2) Digestate waste destined for land application shall undergo pathogen treatment prior to application in accordance with 40 CFR Subpart 503D. In the event 40 CFR Subpart 503D requires site restrictions because of the class of pathogen treatment, the site restrictions required shall be the more restrictive of those included in:
 - (a) 40 CFR 503;
 - (b) 6 NYCRR 360; or
 - (c) This article.
- (3) Digestate waste destined for land application must not exceed the following contaminant concentrations:

Average Monthly Concentration

Parameter	mg/kg, Dry Weight	Maximum Concentration
Mercury (Hg)	10	57
Cadmium (Cd) ¹	21	85
Nickel (Ni)	200	420
Copper (Cu)	1,500	4,300
Lead (Pb)	300	840
Chromium (Cr)	1,000	1,000
Zinc(Zn)	2,500	7,500
Arsenic (As)	41	75
Selenium (Se)	100	100
Molybdenum (Mo)	40	75

Note:

¹ If the monthly average cadmium concentration exceeds 5 ppm, dry-weight basis, the cadmium/zinc ratio must not exceed 0.015.

- (a) If a waste contains heavy metals or other pollutants at concentrations greater than those set forth in 6 NYCRR 360.4 or 360.5, a facility cannot continue to operate until the permittee has implemented an identification and abatement program and compliance has been achieved to assure that the waste has continuously met the quality parameters of this subsection for a period of at least six months.
- (4) All digestate waste must be stabilized to reduce pathogens before land application by one of the methods listed below. Land application of digestate waste that has been stabilized by chlorine oxidation is prohibited.

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- (a) Aerobic digestion. This is conducted by agitating the waste with air or oxygen to maintain aerobic conditions at a mean cell residence time of at least 60 days at 15° C. or greater, to 40 days at 20° C. or greater, with a volatile solids reduction of at least 38%.
 - (b) Air drying. Liquid waste must be allowed to drain or dry on sand beds, or on paved or unpaved basins, in which the digestate waste must not exceed a depth of nine inches. The waste must remain in the drying bed a minimum of three months. During at least two of the three months, the ambient air temperatures must average, on a daily basis, above 0° C.
 - (c) Anaerobic digestion. The waste is digested in the absence of air at a mean cell residence time of at least 60 days at 20° C. or at least 15 days at 35° C. to 55° C., with a volatile solids reduction of at least 38%.
 - (d) Lime stabilization. Sufficient lime must be added to the waste to produce a pH of 12 throughout the waste for at least two hours of contact. Such waste must be thoroughly mixed with the lime.
 - (e) Composting. Using the within-vessel, aerated static pile or windrow composting methods, the temperature of the waste is raised to 40° C. or higher and remains at 40° C. or higher for five consecutive days. For at least four consecutive hours during the five days, the temperature in the compost pile must exceed 55° C.
 - (f) Other methods. Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste are reduced to an extent equivalent to the reduction achieved by any of the above methods and it is approved by the Town and the NYSDEC.
- (5) For land application of digestate waste, one of the following vector attraction reduction requirements must be met:
- (a) Injection. Digestate waste shall be injected below the surface of the land and no significant amount of the waste shall be present on the land surface within one hour after the waste is injected.
 - (b) Incorporation. Digestate waste applied to the land surface shall be incorporated into the soil within six hours after application.
 - (c) Lime stabilization. The pH of waste shall be adjusted to meet the requirements of Subsection A(4)(d) of this section.
- (6) The following site restrictions shall be implemented:
- (a) Food crops with harvested parts that touch the septage/soil mixture and are totally above the land surface must not be harvested for 18 months after land application.
 - (b) Food crops with harvested parts below the surface of the land must not be harvested for 40 months after land application.
 - (c) Food crops, feed crops, and fiber crops shall not be harvested for 45 days after application of digestate waste where these crops grow above the soil with harvested parts which do not touch the digestate waste.
 - (d) The animal grazing requirements of Subsection A(22) must be complied with.
 - (e) Turf grown on land where waste is applied shall not be harvested for one year after application of the digestate waste when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the Town. Public access requirements of Subsection A(22) must be complied with.
- (7) The land applier of digestate waste must sign a certification statement stating that: "The information that

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will be used to determine compliance with this chapter has been prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification, including the possibility of fine and imprisonment." Written permission from the landowners must be obtained for all lands where land application will occur. A multiparty certificate indicating who will be responsible for each applicable operation requirement must be complete and followed.

(8) Annual waste, soil and groundwater testing at the facility is required.

(a) Waste, soil and groundwater must be sampled and analyzed in accordance with the following:

Parameters		
Group A	Group B	Group C
Nitrogen	Arsenic	Extended parameters (See Table 2 under 6 NYCRR Part 360.5)
Total Kjeldahl	Cadium	
Ammonia	Chromium	
Nitrate	Copper	
Total phosphorus	Lead	
Total potassium	Mercury	
pH	Molybdenum	
Total solids	Nickel	
Total volatile solids	Selenium	
	Zinc	

(b) The minimum number of analyses required with permit application and during operation are as follows:

Waste Applied (dry tons/year)	Number of Analyses	
	Groups A and B (per year)	Group C
Greater than 1,000	12	2
200 to 1,000	6	1
Less than 200	1	0

(c) Analyses for other pollutants may be required by the Town Board, on a case-specific basis, based on information from the pretreatment program and other sources, including reputable scholarly articles.

(d) All analyses must be performed by a laboratory certified by the New York State Department of Health for that type of analysis, using methods acceptable to the Department and the Town, unless use of an alternate laboratory or method is authorized by the New York State Department of Environmental Conservation. Copies of the original laboratory results must be included with the permit application.

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- (e) The analysis requirement may be satisfied in part or in whole by recent samples analyzed for and reported to the New York State Department of Environmental Conservation, if approved by the Department and the Town.
- (f) All samples must be representative of the waste to be land-applied.
- (g) After the wastes have been monitored for two years at the frequency outlined in this subsection, the Town may reduce the annual number of Group C analyses required if the waste quality is consistently below the quality standards and is not accumulating.
- (9) The minimum horizontal distance (i.e., "buffer zones") from the perimeter of the site to be used for land application of waste must meet or exceed the following:

Item	Minimum Horizontal Separation Distance (feet)
Drainage swale	50
Property line	100
Surface water body	200
Residence, place of business or public contact area ¹	1,000
School	1,000
Food processing business regulated by the New York State Department of Agriculture	1,000
Water well or supply	400
State-regulated wetland	200

The actual horizontal distances for each facility must be certified, documented, in writing, and filed in the Town Clerk's office and available for public inspection promptly upon completion of application activities.

NOTE:

- ¹ The landowner or operator's residence is excluded from this separation distance requirement. In addition, this requirement does not apply to lands where an adjacent owner consents to the activity within the separation distance.

- (10) During land application, the fields must be flagged or otherwise marked so the buffer zones are apparent to the land applier and to the public. Such flagging shall occur a minimum of 72 hours prior to application of digestate waste.
- (a) Should anyone challenge such buffer zone marking, then a deposit of \$250 shall be paid by the challenger to the Town and the Code Enforcement Officer for the Town of Elma shall determine if the buffer zone requirements have been met.
- (b) Should the buffer have been properly marked in the first instance, then the challenger shall forfeit the \$250 deposit to the Town. In the event that the challenger is successful, then the deposit shall be returned to the challenger and/or operator applicant shall operate outside of the buffer zone.
- (11) Land application must not occur on land with a slope exceeding 15%. Land-applying waste with a total solids content of less than 15% is prohibited on land with a slope greater than 8%, unless applied by

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subsurface injection along paths parallel to contours. The above slopes shall be determined by § 50-15 geographical survey or instrumentation.

- (12) The hydraulic loading must not exceed 16,000 gallons per acre in a twenty-four-hour period.
- (13) The annual cadmium application rate must not exceed 0.45 pound per acre (one-half kilogram per hectare), and the cumulative loading limit of metals must not exceed the following:

Cumulative Loading Limit in Pounds per Acre by Agricultural Soils

Metal	Ag. Soil Groups 1-3	Ag. Soil Groups 4-10
Cadmium (Cd)	3	4
Nickel (Ni)	30	45
Copper (Cu)	75	112
Zinc (Zn)	150	223
Lead (Pb)	267	267
Chromium (Cr)	300	446

NOTE: In addition to the above metals, total chromium (Cr) and mercury (Hg) may be limited based upon their potential effect on groundwater quality.

- (14) The heavy metal loading must not exceed 20% of the cumulative metal loading limit in any one year.
- (15) In addition to all other requirements contained within this article, a detailed soil analysis shall be provided annually for each land application facility, including the types and classifications of soil present, the pH levels of their plow layers, and the ambient level of each of the following substances: mercury, cadmium, nickel, copper, lead, chromium, zinc, arsenic, selenium, molybdenum manganese and such other substances as the Town may require.
- (16) Land application and subsequent vegetation maintenance must be conducted in accordance with soil conservation practices that minimize run-off and soil loss through erosion. Land application must be controlled to prevent contravention of groundwater and surface water standards provided by the New York State Department of Environmental Conservation. The available nitrogen loading must not exceed the nitrogen needs of the crop grown.
- (17) Digestate waste shall not be deposited in a manner that will allow the material to drain or become washed into any body of surface water, stream, or other watercourse. Dikes, berms, or other pollution protection devices or techniques must be used to prevent runoff entering surface waters.
- (18) Land application facilities and practices in floodplains must not result in washout of the solid wastes. Land application is prohibited in floodplain areas designated as floodways as defined in the Environmental Conservation Laws²⁰ and regulations of the State of New York, and the United States (including the Federal Emergency Management Agency).
- (19) Land application is prohibited in areas where bedrock lies less than two feet below the ground surface.
- (20) Soil pH must be adjusted to 6.5 standard units or higher prior to periods of land application.
- (21) Digestate waste must not be applied on snow, frozen or saturated ground, or during rainfall. Permittee must provide written assurance that storage and/or disposal facilities are permitted and available for periods during the year when waste cannot be applied.

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- (22) Public access to the land application facility is prohibited for at least 90 days (on land with a low potential for public exposure, such as agricultural land, forest land, and a reclamation site located in an unpopulated area) and 12 months (on land with a high potential for public exposure, such as a public contact area or a land reclamation site in a populated area) after the last application of waste, and must be controlled during that period by the use of fences and gates, signs, and/or posted signs. Dairy cattle must not graze for at least two months after the last application, and other animals must not graze for at least one month after the last application.
- (23) No crop for direct human consumption may be harvested from soil for at least 18 months since the last land application. See Subsection 5A(6)(a) above.
- (24) Land application is permitted only when the beneficial value of digestate waste as a supply of nutrients or as a soil conditioner can be demonstrated.
- (25) Land application of digestate waste must not occur in areas where the groundwater is within 24 inches of the ground surface at the time of application. Land application of waste must not occur in areas where an aquifer or wellhead protection area is within 60 inches of the ground surface or over a primary aquifer.
- (26) Land application is allowed only on soil having a permeability of 0.06 inch to 6.0 inches per hour and within one or more of the following soil texture classes: sandy loam, sandy clay loam, silty clay loam, loam, silt loam, silt, sandy clay and clay loam.
- (27) An annual report regarding the previous year must be submitted to the Town no later than March 1 of each year and must include, as a minimum:
 - (a) A description of compliance with the Article;
 - (b) The location of the fields used for the application and the method of application;
 - (c) The crops grown on each field;
 - (d) The total quantity of digestate waste applied, including land application dates and quantity applied during each application on each field;
 - (e) The loading rates (hydraulic, nutrient, and cumulative heavy metal) for the sites used;
 - (f) All analytical results required by this article and New York State law, including copies of all laboratory reports; and
 - (g) A description of any problems, complaints, etc., arising as a result of the land application operation, the corrective actions taken.
- (28) The Town and all property owners contiguous to the land application site must be notified in writing at least 72 hours prior to the first land application of each year. All buffer zone markings, described in A(10) above, shall have been put in place prior to such notification.
- (29) Any property interest in real property utilized as a land application facility which is sold, transferred, mortgaged or otherwise encumbered must include this information in any disclosure document required by law.

B. Septage or sludge storage facilities.

- (1) Septage or sludge storage facilities must comply with the applicable local, state and federal requirements (including, but not limited to, this article and the Environmental Conservation Law, and 6 NYCRR 360.4 and 360.5). Surface impoundments, lagoons, open tanks, or other storage facilities, other than surface impoundments used to hold sewage sludge, waste or other solid waste, constructed of concrete, steel, or

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suitable material suitable to the State of New York and the Town shall not be permitted within the Town unless exempted pursuant to § 50-5D above.

- (2) Septage or sludge storage facilities must comply with the buffer zone requirements set forth in § 50-15A(9), except that the buffer zone requirement from a surface impoundment (as defined in Part 360-4) from any residence, or public contact area shall be at least 1500 feet. The actual horizontal distances for each Facility from other possible receptors listed in § 50-15A(9) and this paragraph must be certified, documented, in writing, and filed in the Town Clerk's office and available for inspection.
- (3) All information and documents required pursuant to 6 NYCRR 360.1.9, 360.4.9 and 360.4.10 (and the requirements incorporated therein) must be provided to the Town and approved by the Town as part of any storage application and/or thereafter in connection with any storage design and operation.
- (4) Where there is inconsistency between this article and any other local, state or federal law, the more restrictive shall apply and control.
- (5) Any property interest in real property utilized as a septage or sludge storage facility which is sold, transferred, mortgaged or otherwise encumbered must include this information as provided in any disclosure document required by law.

§ 50-16. Repealer; construal of provisions.

All ordinances and local laws or parts thereof in conflict herewith are preempted by this article; provided, however, that the provisions of this article shall not be interpreted as violating any requirements or restrictions wherever it is possible to conform with the provisions of both this article and any other law or ordinance. This article shall be construed as being in addition to the Zoning Law of the Town of Elma,²¹ the Environmental Conservation Law of the State of New York (ECL)²² (including, but not limited to, 6 NYCRR 360.4 and 360.5), and 40 U.S.C., and the regulations thereunder.

§ 50-17. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment is rendered.

§ 50-18. When effective.

This chapter shall become effective immediately upon its filing with the New York Department of State.

21. Editor's Note: See Ch. 144, Zoning.

22. Editor's Note: See NY Envir Conser § 1-0101 et seq.

Chapter 52

BUILDING CONSTRUCTION

§ 50-18

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

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ARTICLE I
Building Construction Requirements
[Adopted 5-10-1946 by Ord. No. 1; amended in its entirety 9-22-1954]

§ 52-1. Scope.

It is the intent and purpose of this article to set certain minimum requirements for the construction of:

- A. New buildings for residential, commercial or industrial purposes.
- B. Additions to or conversions of existing buildings to be used for residential, commercial or industrial purposes in the Town of Elma.

§ 52-2. Application for construction of or conversion to residential buildings.

Any person, persons or corporation desiring to construct a new residential building or to add to an existing residential building or to convert to a residential building, in the Town of Elma, shall make written application, in duplicate, to the Town Clerk of said Town upon forms supplied by the Clerk. Such forms shall contain the name of the applicant, the name of the architect, if any, the name of the builder and the full name and address of the owner of the property or agent. Each application shall state the estimated cost of the undertaking and shall be accompanied by drawings showing the size of the lot or lots on which it is proposed to build, with floor plans and elevations of the building or buildings, indicating overall dimensions, location of various partitions, windows, doors and chimneys, the purpose of rooms, together with a written description of the type of construction, grade of materials and the finish to be used. The application shall also be accompanied by a further form and a drawing to be submitted to the Health Officer for his approval, showing construction or method of sewage disposal, except when located within an approved sanitary sewage disposal district.

§ 52-3. Building permit fees. [Amended 3-7-1979]

Any person desiring a building permit shall, at the time of filing an application therefor, as provided in this article, pay to the Town Clerk a fee or fees as fixed by resolution of the Town Board from time to time.

§ 52-4. Recreation filing fee. [Added 10-19-1988²³]

- A. A recreation filing fee shall be paid by the building permit applicant with each residential building permit application, or in the alternative, at the option of the Town Board, upon the recommendation of the Planning Board, the Town may accept a contribution of land by a subdivision applicant or developer for future development of recreational area in lieu of per lot or unit charge.
- B. The amount to be charged as a recreation filing fee, pursuant to this section, shall be determined from time to time by resolution of the Town Board.

§ 52-5. Issuance of building permits.

- A. Every application shall be verified by the owner or his agent. Upon receipt of the applications by the Town Clerk, accompanied by the required fees, the duplicate copy shall immediately be turned over to the Building Inspector. If, in the judgment of the Building Inspector, the application indicates that the contemplated construction will comply with the requirements of this article, or any amendments thereto which may hereafter be enacted by the Town of Elma, and the laws of the State of New York, the Building Inspector shall issue a permit to the applicant for the erection of the building and file the application and a copy of the permit with the Town Clerk.

23. Editor's Note: This ordinance also provided that the remaining sections of this article be renumbered accordingly.

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 B. In addition, every such application shall contain plans showing the location of all downspouts, sump pump discharge and any other discharge other than sewerage discharge and how such discharges would be located on, and disposed of on, the premises for which a permit is sought. Such plans must be approved by both the Town Engineer and the Building Inspector and the work satisfactorily completed before a certificate of occupancy shall be issued. Plans for such discharge disposal shall take into consideration the ultimate disposal of such discharges and the ability of the final discharge point to carry the discharges and shall, in addition, minimize surface runoff onto adjacent properties. Such plans shall conform to any stormwater pollution plan approved by the Town for the project in accordance with Chapter 120 of this Code. **[Added 7-15-1981; amended 4-15-2015 by L.L. No. 2-2015]**

§ 52-6. Appeal upon denial of permit; fee. [Amended 3-7-1979]

If the Building Inspector denies the application by reason of nonconforming lot, land usage or construction or for any other reason, then the applicant may file an appeal to the Zoning Board of Appeals. Appeal applications may be obtained from the Building Inspector or Town Clerk, and a fee, to be fixed by resolution of the Town Board from time to time, must be paid to the Town Clerk for each application. The Town Clerk shall forward an appeal application to the Chairman of the Board of Appeals, together with a notation of payment of fee.

§ 52-7. Appointment of Building Inspector.²⁴

The Town Board, upon approval and passage of this article, shall forthwith appoint a Building Inspector, whose term of office shall expire on December 31, 1954, unless sooner removed by the Town Board. At the first annual meeting of the Town Board on each succeeding year thereafter, a Building Inspector shall be appointed for a term of one year unless sooner removed by the Town Board.

§ 52-8. Inspection of buildings; condemnation of noncomplying buildings; penalty for removal of condemnation notice.

- A. The Building Inspector shall inspect all buildings covered by this article at the time of their construction and shall notify the Town Board of any noncompliance with the code in the construction of such buildings.
- B. The Building Inspector shall thereupon condemn and prohibit the use of such buildings and shall notify the owner of such condemnation and shall cause notice of such condemnation to be posted conspicuously on such building. The Building Inspector is authorized to issue stop-work orders for violations of the Town Building Code at any stage of construction if, in the Building Inspector's opinion, noncompliance with the Building Code at that stage of construction could adversely affect public health or safety or soundness of the building, or such violation may be difficult or impossible to reinspect for compliance if construction continues. **[Amended 7-3-1996]**
- C. The removal of such posted condemnation notice without the consent of the Town Board shall be a violation punishable by a fine of not more than \$250 or imprisonment for not more than 15 days, or both. **[Amended 6-3-1981]**
- D. The condemnation notice shall be removed at the direction of the Town Board upon written receipt from the Building Inspector that the building has been reconstructed to comply with this code.

§ 52-9. Penalties for offenses. [Added 6-3-1981]

- A. A person erecting a building, as set forth in § 52-1 without a permit shall be guilty of a violation, punishable by a fine of not more than \$250 or imprisonment for not more than 15 days, or both.
- B. Any person, firm, association or corporation charged with violating any provision of this Building Code shall

24. Editor's Note: This section has been superseded by Art. 75 of the Civil Service Law.
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§ 52-9 be notified, in writing, to be served personally or by registered or certified mail, return receipt requested, upon the same, and any person, firm, association or corporation refusing, failing or neglecting to obey said notice of violation within five days after such written notice shall have been served shall, for each and every violation and for each and every day such violation continues beyond such five-day period, be guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment for a period not to exceed 30 days, or both. Each week's continued violation thereafter shall constitute a separate additional violation. [Amended 3-7-1984] § 52-13

§ 52-10. Adoption of State Building Code.

The Town of Elma hereby adopts the State of New York Building Construction Code and accepts the applicability of the State Building Construction Code for the Town of Elma of the County of Erie of the State of New York in accordance with the provisions of § 374-a of the Executive Law. The Elma Town Clerk be and hereby is instructed to file a certified copy of this section in the principal office of the State Building Code Commission at 1740 Broadway, New York, 19, New York, and in the office of the Secretary of State at Albany, New York.

§ 52-11. Use of spruce in construction. [Added 1-2-1984 by L.L. No. 1-1984]

Notwithstanding the provisions of § 52-10 of this article, and in accordance with the provisions of § 379, Subsection 1, of the Executive Law, the use of spruce material or a combination of pine/spruce/fir, known in the construction trade as "SPF," shall not be permitted in all construction in the Town of Elma, and the Building Inspector shall not hereafter issue building permits for structures containing such materials.

§ 52-12. Exceptions. [Added 11-4-1987 by L.L. No. 3-1987]

- A. Notwithstanding the provisions of § 52-11 of this Code, spruce and SPF material may be used in the construction of buildings and structures not intended for residential use.
- B. For the purposes of this section, "residential use" shall include not only a dwelling, but also any portion of a structure attached to a dwelling, except decking.

§ 52-13. Use of wood foundations. [Added 3-5-1986 by L.L. No. 1-1986]

Notwithstanding any other provision of this Code or of the State Fire Prevention and Building Code or of any other statute, rule or regulation, wood foundations shall be permitted in the Town of Elma only upon compliance with the following conditions:

- A. For structures of not more than two stories in height.
- B. The applicant for a building permit must submit with his application, in addition to all other required data and documents, a report prepared by a qualified soils engineer or soil scientist showing the type of soil within the plot sight, its structural performance, drainage characteristics, frost heave potential and volume change potential expansion.
- C. The data listed in Subsection B must indicate that the soil on the plot is adequate for the structure proposed with respect to design loads. Design loads from the American National Standards Institute Standard A58.1-1972 or other nationally recognized design reference shall be used as a guide.
- D. The entire foundation shall be erected pursuant to any New York State recognized standard generally accepted in the construction industry, and the application for a building permit shall indicate the standard being followed.
- E. In the event that the Building Inspector is required to make more inspections than normally required during the course of construction, an additional inspection fee, to be fixed from time to time by resolution of the Town Board, may be assessed by the Building Inspector, not to exceed the sum of \$100. All fees must be paid before a certificate of occupancy is issued.

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F. Before issuing a building permit for a structure having a wood foundation, the Building Inspector must be satisfied that the person who will install said foundation has sufficient experience and skill to properly do so.

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§ 52-14. Roof and floor sheathing. [Added 4-15-1987 by L.L. No. 1-1987]

In any construction in the Town of Elma, roof sheathing shall consist of not less than one-half-inch plywood, and floor sheathing shall consist of not less than five-eighths-inch plywood. Aspenite, flake board and like materials shall not be used.

ARTICLE II
Administration and Enforcement
[Adopted 2-22-2023 by L.L. No. 1-2023]

§ 52-15. Purpose and intent.

This article provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in this Town of Elma. This article is adopted pursuant to § 10 of the Municipal Home Rule Law. Except as otherwise provided in the Uniform Code, the Energy Code other state law, or other section of this article, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions of this article.

§ 52-16. Definitions.

In this article, the following terms shall have the meanings shown in this section:

ASSEMBLY AREA — An area in any building, or in any portion of a building, that is primarily used or intended to be used for gathering 50 or more persons for uses, including, but not limited to, amusement, athletic, entertainment, social, or other recreational functions; patriotic, political, civic, educational, or religious functions; food or drink consumption; awaiting transportation; or similar purposes.

BUILDING PERMIT — A building permit, construction permit, demolition permit, or other permit that authorizes the performance of work. The term "building permit" shall also include a building permit which is renewed, amended, or extended pursuant to any provision of this article.

CERTIFICATE OF COMPLIANCE — A document issued by the Town of Elma stating that work was done in compliance with approved construction documents and the codes.

CERTIFICATE OF OCCUPANCY — A document issued by the Town of Elma certifying that the building or structure, or portion thereof, complies with the approved construction documents that have been submitted to, and approved by the Town of Elma, and indicating that the building or structure, or portion thereof, is in a condition suitable for occupancy.

CODE ENFORCEMENT OFFICER — The Code Enforcement Officer appointed pursuant to § 52-17B of this article.

CODE ENFORCEMENT PERSONNEL — Includes the Code Enforcement Officer and all inspectors.

CODES — The Uniform Code and Energy Code.

ENERGY CODE — The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law.

FCNYS — The 2020 Fire Code of New York State as currently incorporated by reference in 19 NYCRR Part 1225.

FIRE SAFETY AND PROPERTY MAINTENANCE INSPECTION — An inspection performed to determine compliance with the applicable provisions of 19 NYCRR Part 1225 and the publications incorporated therein by reference and the applicable provisions of 19 NYCRR Part 1226 and the publications incorporated therein by reference.

HAZARDOUS PRODUCTION MATERIALS — A solid, liquid, or gas associated with semiconductor manufacturing that has a degree-of-hazard rating in health, flammability, or instability of Class 3 or 4, as ranked by NFPA 704 (Standard Systems for Identification of the Hazards of Materials for Emergency Response), and which is used directly in research, laboratory, or production processes which have, as their end product, materials that are not hazardous.

INSPECTOR — An inspector appointed pursuant to § 101-17D of this article.

MOBILE FOOD PREPARATION VEHICLES — Vehicles that contain cooking equipment that produces smoke

§ 52-16 or grease-laden vapors for the purpose of preparing and serving food to the public. Vehicles intended for private recreation shall not be considered mobile food preparation vehicles. § 52-17

OPERATING PERMIT — A permit issued pursuant to § 52-24 of this article. The term "operating permit" shall also include an operating permit which is renewed, amended, or extended pursuant to any provision of this article.

ORDER TO REMEDY — An order issued by the Code Enforcement Officer pursuant to § 52-31A of this article.

PERMIT HOLDER — The person to whom a building permit has been issued.

PERSON — Includes an individual, corporation, limited-liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

PMCNYS — The 2020 Property Maintenance Code of New York State as currently incorporated by reference in 19 NYCRR Part 1226.

RCNYS — The 2020 Residential Code of New York State as currently incorporated by reference in 19 NYCRR Part 1220.

REPAIR — The reconstruction, replacement, or renewal of any part of an existing building for the purpose of its maintenance or to correct damage.

STOP-WORK ORDER — An order issued pursuant to § 52-20 of this article.

SUGARHOUSE — A building used, in whole or in part, for the collection, storage, or processing of maple sap into maple syrup and/or maple sugar.

TEMPORARY CERTIFICATE OF OCCUPANCY — A certificate issued pursuant to § 52-21D of this article.

TOWN — The Town of Elma.

UNIFORM CODE — The New York State Uniform Fire Prevention and Building Code, Subchapter A of Chapter XXXIII of Title 19 of the NYCRR, adopted pursuant to Article 18 of the Executive Law.

§ 52-17. Code Enforcement Officer and inspectors.

- A. The Office of Code Enforcement Officer is hereby created. The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code, and this article. The Code Enforcement Officer shall have the following powers and duties:
- (1) To receive, review, and approve or disapprove applications for building permits, certificates of Occupancy, certificates of compliance, temporary certificates of Occupancy, and operating permits, and the plans, specifications, and construction documents submitted with such applications;
 - (2) Upon approval of such applications, to issue building permits, certificates of Occupancy, certificates of compliance, temporary certificates of Occupancy, and operating permits, and to include in terms and conditions as the Code Enforcement Officer may determine to be appropriate building permits, certificates of Occupancy, certificates of compliance, temporary certificates of Occupancy, and operating permits;
 - (3) To conduct construction inspections; inspections to be made prior to the issuance of certificates of Occupancy, certificates of compliance, temporary certificates of Occupancy, and operating permits; fire safety and property maintenance inspections; inspections incidental to the investigation of complaints; and all other inspections required or permitted under any provision of this article;
 - (4) To issue stop-work orders;
 - (5) To review and investigate complaints;
 - (6) To issue orders pursuant to § 52-31A (Remedies, appearance tickets, penalties for offenses; injunctive relief) of this article;

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- (7) To maintain records;
- (8) To collect fees as set by the Elma Town Board of this Town of Elma;
- (9) To pursue administrative enforcement actions and proceedings;
- (10) In consultation with the Elma Town attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code, and this article, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code, or this article; and
- (11) To exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this article.
- B. The Code Enforcement Officer shall be appointed by the Elma Town Board and Erie County Civil Service requirements. The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training, and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the Department of State pursuant to the Executive Law and the regulations promulgated thereunder.
- C. In the event that the Code Enforcement Officer is unable to serve as such for any reason, another individual shall be appointed by Elma Town Board and Erie County Civil Service requirements to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of their appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this article.
- D. One or more inspectors may be appointed Elma Town Board and Erie County Civil Service requirements to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this article. Each inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training, and other training as the State of New York shall require for code enforcement personnel, and each inspector shall obtain certification from the Department of State pursuant to the Executive Law and the regulations promulgated thereunder.
- E. The compensation for the Code Enforcement Officer and inspectors shall be fixed from time to time by the Elma Town Board.

§ 52-18. Building permits.

- A. Building permits required. A building permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation, or demolition of any building or structure or any portion thereof, and the installation of a solid fuel-burning heating appliance, chimney, or flue in any dwelling unit. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Town of Elma.
- B. This subsection is intentionally omitted.
- C. This subsection is intentionally omitted.
- D. Applications for building permits. Applications for a building permit shall be made, in writing, on a form provided by or otherwise acceptable to the Code Enforcement Officer. The application shall be signed by the owner of the property where the work is to be performed or an authorized agent of the owner. The application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:

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- (1) A description of the location, nature, extent, and scope of the proposed work;
- (2) The Tax Map number and the street address of any affected building or structure;
- (3) The occupancy classification of any affected building or structure;
- (4) Where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
- (5) At least two sets of construction documents (drawings and/or specifications) which:
 - (a) Describe the location, nature, extent, and scope of the proposed work;
 - (b) Show that the proposed work will conform to the applicable provisions of the codes;
 - (c) Show the location, construction, size, and character of all portions of the means of egress;
 - (d) Show a representation of the building thermal envelope;
 - (e) Show structural information, including, but not limited to, braced wall designs, the size, section, and relative locations of structural members, design loads, and other pertinent structural information;
 - (f) Show the proposed structural, electrical, plumbing, mechanical, fire-protection, and other service systems of the building;
 - (g) Include a written statement indicating compliance with the Energy Code;
 - (h) Include a site plan, drawn to scale and drawn in accordance with an accurate boundary survey, showing the size and location of new construction and existing structures and appurtenances on the site, distances from lot lines, the established street grades and the proposed finished grades, and, as applicable, flood hazard areas, floodways, and design flood elevations; and
 - (i) Evidence that the documents were prepared by a licensed and registered architect in accordance with Article 147 of the New York State Education Law or a licensed and registered professional engineer in accordance with Article 145 of the New York State Education Law and practice guidelines, including, but not limited to, the design professional's seal which clearly and legibly shows both the design professional's name and license number and is signed by the design professional whose name appears on the seal in such a manner that neither the name nor the number is obscured in any way, the design professional's registration expiration date, the design professional's firm name (if not a sole practitioner), and, if the documents are submitted by a professional engineering firm and not a sole practitioner professional engineer, the firm's certificate of Authorization number.

- E. Construction documents. Construction documents will not be accepted as part of an application for a building permit unless they satisfy the requirements set forth in Subsection D(5) of this section. Construction documents which are accepted as part of the application for a building permit shall be marked as accepted by the Code Enforcement Officer, in writing or by stamp, or in the case of electronic media, an electronic marking. One set of the accepted construction documents shall be retained by the Code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the Code Enforcement personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a building permit will be issued. Work shall not be commenced until and unless a building permit is issued.
- F. Issuance of building permits. An application for a building permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The

§ 52-18 Code Enforcement Officer shall issue a building permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. § 52-19

- G. Building permits to be displayed. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.
- H. Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the building permit. The building permit shall contain such a directive. The permit holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The building permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended building permit, such change shall not be made until and unless a new or amended building permit reflecting such change is issued.
- I. Time limits. Building permits shall become invalid unless the authorized work is commenced within six months following the date of issuance. Building permits shall expire 12 months after the date of issuance. A building permit which has become invalid or which has expired pursuant to this subsection may be renewed upon application by the permit holder, payment of the applicable fee, and approval of the application by the Code Enforcement Officer.
- J. Revocation or suspension of building permits. If the Code Enforcement Officer determines that a building permit was issued in error because of incorrect, inaccurate, or incomplete information, or that the work for which a building permit was issued violates the Uniform Code or the Energy Code, the Code Enforcement Officer shall revoke the building permit or suspend the building permit until such time as the permit holder demonstrates that 1) all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code and 2) all work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.
- K. Fee. The fee specified in or determined in accordance with the provisions set forth in § 52-32 (Fees) of this article must be paid at the time of submission of an application for a building permit, for an amended building permit, or for renewal of a building permit.

§ 52-19. Construction inspections.

- A. Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an inspector authorized by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subsection B of this section is ready for inspection.
- B. Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:
 - (1) Work site prior to the issuance of a building permit;
 - (2) Footing and foundation;
 - (3) Preparation for concrete slab;
 - (4) Framing;
 - (5) Structural, electrical, plumbing, mechanical, fire protection, and other similar service systems of the building;
 - (6) Fire-resistant construction;
 - (7) Fire-resistant penetrations;

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- (8) Solid fuel-burning heating appliances, chimneys, flues, or gas vents;
 - (9) Inspections required to demonstrate Energy Code compliance, including, but not limited to, insulation, fenestration, air leakage, system controls, mechanical equipment size, and, where required, minimum fan efficiencies, programmable thermostats, energy recovery, whole-house ventilation, plumbing heat traps, and high-performance lighting and controls;
 - (10) Installation, connection, and assembly of factory manufactured buildings and manufactured homes; and
 - (11) A final inspection after all work authorized by the building permit has been completed.
- C. Remote inspections. At the discretion of the Code Enforcement Officer or inspector authorized to perform construction inspections, a remote inspection may be performed in lieu of an in-person inspection when, in the opinion of the Code Enforcement Officer or such authorized inspector, the remote inspection can be performed to the same level and quality as an in-person inspection and the remote inspection shows to the satisfaction of the Code Enforcement Officer or by such authorized inspector that the elements of the construction process conform with the applicable requirements of the Uniform Code and Energy Code. Should a remote inspection not afford the Code Enforcement Officer or such authorized inspector sufficient information to make a determination, an in-person inspection shall be performed.
- D. Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to the manner in which the work fails to comply with the Uniform Code or Energy Code, including a citation to the specific code provision or provisions that have not been met. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.
- E. Fee. The fee specified in or determined in accordance with the provisions set forth in § 52-32 (Fees) of this article must be paid prior to or at the time of each inspection performed pursuant to this section.

§ 52-20. Stop-work orders.

- A. Authority to issue. The Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Code Enforcement Officer shall issue a stop-work order to halt:
- (1) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
 - (2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
 - (3) Any work for which a building permit is required which is being performed without the required building permit, or under a building permit that has become invalid, has expired, or has been suspended or revoked.
- B. Content of stop-work orders. Stop-work orders shall 1) be in writing; 2) be dated and signed by the Code Enforcement Officer; 3) state the reason or reasons for issuance; and 4) if applicable, state the conditions which must be satisfied before work will be permitted to resume.
- C. Service of stop-work orders. The Code Enforcement Officer shall cause the stop-work order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the permit holder, on the permit holder) personally or by [registered mail/certified mail].²⁵ The Code Enforcement Officer shall be

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permitted, but not required, to cause the stop-work order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work affected by the stop-work order, personally or by [registered mail/certified mail],²⁶ provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the stop-work order.

- D. Effect of stop-work order. Upon the issuance of a stop-work order, the owner of the affected property, the permit holder, and any other person performing, taking part in, or assisting in the work shall immediately cease all work which is the subject of the stop-work order, other than work expressly authorized by the Code Enforcement Officer to correct the reason for issuing the stop-work order.
- E. Remedy not exclusive. The issuance of a stop-work order shall not be the exclusive remedy available to address any event described in Subdivision A of this section, and the authority to issue a stop-work order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under § 52-31 (Remedies, appearance tickets, penalties for offenses; injunctive relief) of this article or under any other applicable local law or state law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a stop-work order.

§ 52-21. Certificates of occupancy and certificates of compliance.

- A. Certificates of occupancy and certificates of compliance required. A certificate of occupancy or certificate of compliance shall be required for any work which is the subject of a building permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a building permit was previously issued shall be granted only by issuance of a certificate of occupancy or certificate of compliance.
- B. Issuance of certificates of occupancy and certificates of compliance. The Code Enforcement Officer shall issue a certificate of Occupancy or certificate of compliance if the work which was the subject of the building permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code and, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer shall inspect the building, structure, or work prior to the issuance of a certificate of Occupancy or certificate of compliance. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the certificate of Occupancy or certificate of compliance, shall be provided to the Code Enforcement Officer prior to the issuance of the certificate of Occupancy or certificate of compliance:
 - (1) A written statement of structural observations and/or a final report of special inspections;
 - (2) Flood hazard certifications;
 - (3) A written statement of the results of tests performed to show compliance with the Energy Code; and
 - (4) Where applicable, the affixation of the appropriate seals, insignias, and manufacturer's data plates as required for factory manufactured buildings and/or manufactured homes.
- C. Contents of certificates of occupancy and certificates of compliance. A certificate of Occupancy or certificate of compliance shall contain the following information:

25. Editor's Note: So as in original.

26. Editor's Note: So as in original.

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- (1) The building permit number, if any;
- (2) The date of issuance of the building permit, if any;
- (3) The name (if any), address and Tax Map number of the property;
- (4) If the certificate of Occupancy or certificate of compliance is not applicable to an entire structure, a description of that portion of the structure for which the certificate of Occupancy or certificate of compliance is issued;
- (5) The use and occupancy classification of the structure;
- (6) The type of construction of the structure;
- (7) The occupant load of the assembly areas in the structure, if any;
- (8) Any special conditions imposed in connection with the issuance of the building permit; and
- (9) The signature of the Code Enforcement Officer issuing the certificate of Occupancy or certificate of compliance and the date of issuance.

- D. Temporary certificate of occupancy. The Code Enforcement Officer shall be permitted to issue a temporary certificate of Occupancy allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a building permit. However, in no event shall the Code Enforcement Officer issue a temporary certificate of Occupancy unless the Code Enforcement Officer determines 1) that the building or structure, or the portion thereof covered by the temporary certificate of Occupancy, may be occupied safely, 2) that any required fire and life safety components, such as fire-protection equipment and fire, smoke, carbon monoxide, and heat detectors and alarms are installed and operational, and 3) that all required means of egress from the structure have been provided. The Code Enforcement Officer may include in a temporary certificate of Occupancy such terms and conditions as he or she deems necessary or appropriate to ensure the health and safety of the persons occupying and using the building or structure and/or performing further construction work in the building or structure.
- E. A temporary certificate of Occupancy shall be effective for a period of time, not to exceed six months, which shall be determined by the Code Enforcement Officer and specified in the temporary certificate of Occupancy. During the specified period of effectiveness of the temporary certificate of Occupancy, the permit holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.
- F. Revocation or suspension of certificates. If the Code Enforcement Officer determines that a certificate of Occupancy, Certification of compliance, or a temporary certificate of Occupancy was issued in error or on the basis of incorrect information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.
- G. Fee. The fee specified in or determined in accordance with the provisions set forth in § 52-32 (Fees) of this article must be paid at the time of submission of an application for a certificate of Occupancy, certificate of compliance, or for temporary certificate of Occupancy.

§ 52-22. Notification regarding fire or explosion.

The chief of any fire department providing firefighting services for a property within this Town of Elma shall promptly notify the Code Enforcement Officer of any fire or explosion involving any structural damage, fuel-burning appliance, chimney, or gas vent.

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§ 52-23. Unsafe buildings, structures, and equipment and conditions of imminent danger.

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Unsafe buildings, structures, and equipment and conditions of imminent danger in this Town of Elma shall be identified and addressed in accordance with the procedures established by Elma Town Code, Chapter 56, as now in effect or as hereafter amended from time to time.

§ 52-24. Operating permits.

- A. Operation permits required. Operating permits and or "Business use permits" as defined by Town of Code shall be required for conducting any process or activity or for operating any type of building, structure, or facility listed below:
- (1) Manufacturing, storing, or handling hazardous materials in quantities exceeding those listed in the applicable Maximum Allowable Quantity tables found in Chapter 50 of the FCNYS;
 - (2) Buildings, structures, facilities, processes, and/or activities that are within the scope and/or permit requirements of the chapter or section title of the FCNYS as follows:
 - (a) Chapter 22, "Combustible Dust-Producing Operations." Facilities where the operation produces combustible dust;
 - (b) Chapter 24, "Flammable Finishes." Operations utilizing flammable or combustible liquids, or the application of combustible powders regulated by Chapter 24 of the FCNYS;
 - (c) Chapter 25, "Fruit and Crop Ripening." Operating a fruit- or crop-ripening facility or conducting a fruit-ripening process using ethylene gas;
 - (d) Chapter 26, "Fumigation and Insecticidal Fogging." Conducting fumigation or insecticidal fogging operations in buildings, structures, and spaces, except for fumigation or insecticidal fogging performed by the occupant of a detached one-family dwelling;
 - (e) Chapter 31, "Tents, temporary Special Event Structures, and Other Membrane Structures." Operating an air-supported temporary membrane structure, a temporary special event structure, or a tent where approval is required pursuant to Chapter 31 of the FCNYS;
 - (f) Chapter 32, "High-Piled Combustible Storage." High-piled combustible storage facilities with more than 500 square feet (including aisles) of high-piled storage;
 - (g) Chapter 34, "Tire Rebuilding and Tire Storage." Operating a facility that stores in excess of 2,500 cubic feet of scrap tires or tire by-products or operating a tire rebuilding plant;
 - (h) Chapter 35, "Welding and Other Hot Work." Performing public exhibitions and demonstrations where hot work is conducted, use of hot work, welding, or cutting equipment, inside or on a structure, except an operating permit is not required where work is conducted under the authorization of a building permit or where performed by the occupant of a detached one- or two-family dwelling;
 - (i) Chapter 40, "Sugarhouse Alternative Activity Provisions." Conducting an alternative activity at a sugarhouse;
 - (j) Chapter 56, "Explosives and Fireworks." Possessing, manufacturing, storing, handling, selling, or using, explosives, fireworks, or other pyrotechnic special effects materials except the outdoor use of sparkling devices as defined by Penal Law § 270;
 - (k) Section 307, "Open Burning, Recreational Fires and Portable Outdoor Fireplaces." Conducting open burning, not including recreational fires and portable outdoor fireplaces;

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- (l) Section 308, "Open Flames." Removing paint with a torch, or using open flames, fire, and burning in connection with assembly areas or educational occupancies; and
- (m) Section 319, "Mobile Food Preparation Vehicles." Operating a mobile food preparation vehicle in accordance with the permitting requirements established by Local Law Number [_____] of [____], as now in effect or as hereafter amended from time to time.
- (3) Energy storage systems, where the system exceeds the values shown in Table 1206.1 of the FCNYS or exceeds the permitted aggregate ratings in Section R327.5 of the RCNYS.
- (4) Buildings containing one or more assembly areas;
- (5) Outdoor events where the planned attendance exceeds 1,000 persons;
- (6) Facilities that store, handle or use hazardous production materials;
- (7) Parking garages as defined in Subdivision A of § 52-27 of this article;
- (8) Buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Elma Town Board of this Town of Elma; and
- (9) Other processes or activities or for operating any type of building, structure, or facility as determined by resolution adopted by the Elma Town Board.

Any person who proposes to undertake any activity or to operate any type of building listed in this Subdivision A shall be required to obtain an operating permit prior to commencing such activity or operation.

- B. Applications for operating permits. An application for an operating permit shall be in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.
- C. Exemptions. Operating permits shall not be required for processes or activities, or the buildings, structures, or facilities listed in Subsection A(1) through (7) of of this section, provided that the use is expressly authorized by a certificate of occupancy or certificate of compliance, fire safety and property maintenance inspections are performed in accordance with § 52-25 (Fire safety and property maintenance inspections) of this article, and condition assessments are performed in compliance with § 52-27 (Condition assessments of parking garages) of this article, as applicable.

§ 52-25. Fire safety and property maintenance inspections.

- A. Inspections required. Fire safety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer or an inspector designated by the Code Enforcement Officer at the following intervals:
 - (1) At least once every 12 months for buildings which contain an assembly area;
 - (2) At least once every 12 months for public and private schools and colleges, including any buildings of such schools or colleges containing classrooms, dormitories, fraternities, sororities, laboratories, physical education, dining, or recreational facilities; and
 - (3) At least once every 36 months for multiple dwellings and all nonresidential occupancies.

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B. Remote inspections. At the discretion of the Code Enforcement Officer or inspector authorized to perform fire safety and property maintenance inspections, a remote inspection may be performed in lieu of in-person inspections when, in the opinion of the Code Enforcement Officer or such authorized inspector, the remote inspection can be performed to the same level and quality as an in-person inspection and the remote inspection shows to the satisfaction of the Code Enforcement Officer or such authorized inspector that the premises conform with the applicable provisions of 19 NYCRR Part 1225 and the publications incorporated therein by reference and the applicable provisions of 19 NYCRR Part 1226 and the publications incorporated therein by reference. Should a remote inspection not afford the Code Enforcement Officer or such authorized inspector sufficient information to make a determination, an in-person inspection shall be performed.

C. Inspections permitted. In addition to the inspections required by Subdivision A of this section, a fire safety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer or an inspector authorized to perform fire safety and property maintenance inspections at any time upon:

- (1) The request of the owner of the property to be inspected or an authorized agent of such owner;
- (2) Receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or
- (3) Receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist; provided, however, that nothing in this subsection shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

D. OFPC inspections. Nothing in this section or in any other provision of this article shall supersede, limit, or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control ("OFPC") and the New York State Fire Administrator or other authorized entity under Executive Law § 156-e and Education Law § 807-b.

Notwithstanding any other provision of this section to the contrary, the Code Enforcement Officer may accept an inspection performed by the Office of Fire Prevention and Control or other authorized entity pursuant to §§ 807-a and 807-b of the Education Law and/or § 156-e of the Executive Law, in lieu of a fire safety and property maintenance inspection performed by the Code Enforcement Officer or by an inspector, provided that:

- (1) The Code Enforcement Officer is satisfied that the individual performing such inspection satisfies the requirements set forth in 19 NYCRR Section 1203.2(e);
- (2) The Code Enforcement Officer is satisfied that such inspection covers all elements required to be covered by a fire safety and property maintenance inspection;
- (3) Such inspections are performed no less frequently than once a year;
- (4) A true and complete copy of the report of each such inspection is provided to the Code Enforcement Officer; and
- (5) Upon receipt of each such report, the Code Enforcement Officer takes the appropriate action prescribed by § 52-31 (Remedies, appearance tickets, penalties for offenses; injunctive relief) of this article.

E. Fee. The fee specified in or determined in accordance with the provisions set forth in § 52-32 (Fees) of this article must be paid prior to or at the time each inspection performed pursuant to this section. This subsection shall not apply to inspections performed by OFPC.

§ 52-26. Complaints.

The Code Enforcement Officer shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this article, or any other local law or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code. The process for responding to a complaint shall include such of the following steps as the Code Enforcement Officer may deem to be appropriate:

- A. Performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
- B. If a violation is found to exist, providing the owner of the affected property and any other person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in § 52-31 (Remedies, appearance tickets, penalties for offenses; injunctive relief) of this article;
- C. If appropriate, issuing a stop-work order;
- D. If a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

§ 52-27. Condition assessments of parking garages.

- A. Definitions. For the purposes of this section:

CONDITION ASSESSMENT — An on-site inspection and evaluation of a parking garage for evidence of deterioration of any structural element or building component of such parking garage, evidence of the existence of any unsafe condition in such parking garage, and evidence indicating that such parking garage is an unsafe structure.

DETERIORATION — The weakening, disintegration, corrosion, rust, or decay of any structural element or building component, or any other loss of effectiveness of a structural element or building component.

PARKING GARAGE — Any building or structure, or part thereof, in which all or any part of any structural level or levels is used for parking or storage of motor vehicles, excluding:

- (1) Buildings in which the only level used for parking or storage of motor vehicles is on grade;
- (2) An attached or accessory structure providing parking exclusively for a detached one- or two-family dwelling; and
- (3) A townhouse unit with attached parking exclusively for such unit.

PROFESSIONAL ENGINEER — An individual who is licensed or otherwise authorized under Article 145 of the Education Law to practice the profession of engineering in the State of New York and who has at least three years of experience performing structural evaluations.

RESPONSIBLE PROFESSIONAL ENGINEER — The professional engineer who performs a condition assessment, or under whose supervision a condition assessment is performed, and who seals and signs the condition assessment report. The use of the term "responsible professional engineer" shall not be construed as limiting the professional responsibility or liability of any professional engineer, or of any other licensed professional, who participates in the preparation of a condition assessment without being the responsible professional engineer for such condition assessment.

UNSAFE CONDITION — Includes the conditions identified as "unsafe" in Sections 304.1.1, 305.1.1, and 306.1.1 of the PMCNYS.

UNSAFE STRUCTURE — A structure that is so damaged, decayed, dilapidated, or structurally unsafe, or is

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of such faulty construction or unstable foundation, that partial or complete collapse is possible.

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- B. Condition assessments — GENERAL REQUIREMENTS — The owner operator of each parking garage shall cause such parking garage to undergo an initial condition assessment as described in Subsection C of this section, periodic condition assessments as described in Subsection of this section, and such additional condition assessments as may be required under Subsection E of this section. Each condition assessment shall be conducted by or under the direct supervision of a professional engineer. A written report of each condition assessment shall be prepared, and provided to the Town of Elma, in accordance with the requirements of Subsection F of this section. Before performing a condition assessment (other than the initial condition assessment) of a parking garage, the responsible professional engineer for such condition assessment shall review all available previous condition assessment reports for such parking garage.
- C. Initial condition assessment. Each parking garage shall undergo an initial condition assessment as follows:
- (1) Parking garages constructed on or after August 29, 2018, shall undergo an initial condition assessment following construction and prior to a certificate of occupancy or certificate of compliance being issued for the structure.
 - (2) Parking garages constructed prior to August 29, 2018, shall undergo an initial condition assessment as follows:
 - (a) If originally constructed prior to January 1, 1984, then prior to October 1, 2019;
 - (b) If originally constructed between January 1, 1984, and December 31, 2002, then prior to October 1, 2020; and
 - (c) If originally constructed between January 1, 2003, and August 28, 2018, then prior to October 1, 2021.
 - (3) Any parking garage constructed prior to the effective date of the local law enacting this provision that has not undergone an initial condition assessment prior to that effective date shall undergo an initial condition assessment prior to not more than six months after the effective date of this article.
- D. Periodic condition assessments. Following the initial condition assessment of a parking garage, such parking garage shall undergo periodic condition assessments at intervals not to exceed three years.
- E. Additional condition assessments.
- (1) If the latest condition assessment report for a parking garage includes a recommendation by the responsible professional engineer that an additional condition assessment of such parking garage, or any portion of such parking garage, be performed before the date by which the next periodic condition assessment would be required under Subsection C of this section, the owner or operator of such parking garage shall cause such parking garage (or, if applicable, the portion of such parking garage identified by the responsible professional engineer) to undergo an additional condition assessment no later than the date recommended in such condition assessment report.
 - (2) If the Town of Elma becomes aware of any new or increased deterioration which, in the judgment of the Town of Elma, indicates that an additional condition assessment of the entire parking garage, or of the portion of the parking garage affected by such new or increased deterioration, should be performed before the date by which the next periodic condition assessment would be required under Subsection C of this section, the owner or operator of such parking garage shall cause such parking garage (or, if applicable, the portion of the parking garage affected by such new or increased deterioration) to undergo an additional condition assessment no later than the date determined by the Town of Elma to be appropriate.
- F. Condition assessment reports. The responsible professional engineer shall prepare, or directly supervise the

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preparation of, a written report of each condition assessment, and shall submit such condition assessment report to the Town of Elma within 30 days of inspection. Such condition assessment report shall be sealed and signed by the responsible professional engineer, and shall include:

- (1) An evaluation and description of the extent of deterioration and conditions that cause deterioration that could result in an unsafe condition or unsafe structure;
- (2) An evaluation and description of the extent of deterioration and conditions that cause deterioration that, in the opinion of the responsible professional engineer, should be remedied immediately to prevent an unsafe condition or unsafe structure;
- (3) An evaluation and description of the unsafe conditions;
- (4) An evaluation and description of the problems associated with the deterioration, conditions that cause deterioration, and unsafe conditions;
- (5) An evaluation and description of the corrective options available, including the recommended time frame for remedying the deterioration, conditions that cause deterioration, and unsafe conditions;
- (6) An evaluation and description of the risks associated with not addressing the deterioration, conditions that cause deterioration, and unsafe conditions;
- (7) The responsible professional engineer's recommendation regarding preventative maintenance;
- (8) Except in the case of the report of the initial condition assessment, the responsible professional engineer's attestation that he or she reviewed all previously prepared condition assessment reports available for such parking garage, and considered the information in the previously prepared reports while performing the current condition assessment and while preparing the current report; and
- (9) The responsible professional engineer's recommendation regarding the time within which the next condition assessment of the parking garage or portion thereof should be performed. In making the recommendation regarding the time within which the next condition assessment of the parking garage or portion thereof should be performed, the responsible professional engineer shall consider the parking garage's age, maintenance history, structural condition, construction materials, frequency and intensity of use, location, exposure to the elements, and any other factors deemed relevant by the responsible professional engineer in their professional judgment.

G. Review condition assessment reports. The Town of Elma shall take such enforcement action or actions in response to the information in such condition assessment report as may be necessary or appropriate to protect the public from the hazards that may result from the conditions described in such report. In particular, but not by way of limitation, the Town of Elma shall, by order to remedy or such other means of enforcement as the Town of Elma may deem appropriate, require the owner or operator of the parking garage to repair or otherwise remedy all deterioration, all conditions that cause deterioration, and all unsafe conditions identified in such condition assessment report pursuant to Subsection F(2) and (3). All repairs and remedies shall comply with the applicable provisions of the Uniform Code. This section shall not limit or impair the right of the Town of Elma to take any other enforcement action, including, but not limited to, suspension or revocation of a parking garage's operating permit, as may be necessary or appropriate in response to the information in a condition assessment report.

H. The Town of Elma shall retain all condition assessment reports for the life of the parking garage. Upon request by a professional engineer who has been engaged to perform a condition assessment of a parking garage, and who provides the Town of Elma with a written statement attesting to the fact that he or she has been so engaged, the Town of Elma shall make the previously prepared condition assessment reports for such parking garage (or copies of such reports) available to such professional engineer. The Town of Elma shall be permitted to require the owner or operator of the subject parking garage to pay all costs and expenses associated with making such previously prepared condition assessment reports (or copies thereof) available

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to the professional engineer.

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I. This section shall not limit or impair the right or the obligation of the Town of Elma:

- (1) To perform such construction inspections as are required by § 52-19 (Construction inspections) of this article;
- (2) To perform such periodic fire safety and property maintenance inspections as are required by § 52-25 (Fire safety and property maintenance inspections) of this article; and/or
- (3) To take such enforcement action or actions as may be necessary or appropriate to respond to any condition that comes to the attention of the Town of Elma by means of its own inspections or observations, by means of a complaint, or by any other means other than a condition assessment or a report of a condition assessment.

§ 52-28. Climatic and geographic design criteria.

A. The Code Enforcement Officer shall determine the climatic and geographic design criteria for buildings and structures constructed within this Town of Elma as required by the Uniform Code. Such determinations shall be made in the manner specified in the Uniform Code using, where applicable, the maps, charts, and other information provided in the Uniform Code. The criteria to be so determined shall include but shall not necessarily be limited to, the following:

- (1) Design criteria to include ground snow load; wind design loads; seismic category; potential damage from weathering, frost, and termite; winter design temperature; whether ice barrier underlayment is required; the air freezing index; and the mean annual temperature;
- (2) Heating and cooling equipment design criteria for structures within the scope of the RCNYS. The design criteria shall include the data identified in the Design Criteria Table found in Chapter 3 of the RCNYS; and
- (3) Flood hazard areas, flood hazard maps, and supporting data. The flood hazard map shall include, at a minimum, special flood hazard areas as identified by the Federal Emergency Management Agency in the Flood Insurance Study for the community, as amended or revised with:
 - (a) The accompanying Flood Insurance Rate Map (FIRM);
 - (b) Flood Boundary and Floodway Map (FBFM); and
 - (c) Related supporting data along with any revisions thereto.

B. The Code Enforcement Officer shall prepare a written record of the climatic and geographic design criteria determined pursuant to Subdivision A of this section, shall maintain such record within the office of the Code Enforcement Officer, and shall make such record readily available to the public.

§ 52-29. Recordkeeping.

A. The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all Code Enforcement personnel, including records of:

- (1) All applications received, reviewed and approved or denied;
- (2) All plans, specifications and construction documents approved;
- (3) All building permits, certificates of Occupancy, certificates of compliance, temporary certificates, stop-work orders, and operating permits issued;

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- (4) All inspections and tests performed;
- (5) All statements and reports issued;
- (6) All complaints received;
- (7) All investigations conducted;
- (8) All condition assessment reports received;
- (9) All fees charged and collected; and
- (10) All other features and activities specified in or contemplated by §§ 52-18 through 52-28, inclusive, of this article.

B. All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by state law and regulation.

§ 52-30. Program review and reporting.

- A. The Code Enforcement Officer shall annually submit to the Elma Town Board of this Town of Elma a written building permit report and summary conducted by the Code Enforcement Officer and the inspectors, including a report and summary of all transactions and activities described in § 52-28 (Recordkeeping) of this article and a report and summary of all appeals or litigation pending or concluded.
- B. The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of this Town of Elma, on a form prescribed by the Secretary of State, a report of the activities of this Town of Elma relative to administration and enforcement of the Uniform Code.
- C. The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State, true and complete copies of the records and related materials this Town of Elma is required to maintain; true and complete copies of such portion of such records and related materials as may be requested by the Department of State; and/or such excerpts, summaries, tabulations, statistics, and other information and accounts of its activities in connection with administration and enforcement of the Uniform Code and/or Energy Code as may be requested by the Department of State.

§ 52-31. Remedies; appearance tickets; penalties for offenses; injunctive relief.

A. Orders to remedy.

- (1) The Code Enforcement Officer is authorized to order, in writing, the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this article. An order to remedy shall be in writing; shall be dated and signed by the Code Enforcement Officer; shall specify the condition or activity that violates the Uniform Code, the Energy Code, or this article; shall specify the provision or provisions of the Uniform Code, the Energy Code, or this article which is/are violated by the specified condition or activity; and shall include a statement substantially similar to the following:

"The person or entity served with this order to remedy must completely remedy each violation described in this order to remedy by ____ [specify date], which is 30 days after the date of this order to remedy."

- (2) The order to remedy may include provisions ordering the person or entity served with such order to remedy 1) to begin to remedy the violations described in the order to remedy immediately, or within some other specified period of time which may be less than 30 days; to continue diligently to remedy such violations until each such violation is fully remedied; and, in any event, to complete the remedying

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of all such violations within 30 days of the date of such order to remedy; and/or 2) to take such other protective actions (such as vacating the building or barricading the area where the violations exist) which are authorized by this article or by any other applicable statute, regulation, rule, local law or ordinance, and which the Code Enforcement Officer may deem appropriate, during the period while such violations are being remedied. The Code Enforcement Officer shall cause the order to remedy, or a copy thereof, to be served on the owner of the affected property personally or by registered mail or certified mail within five days after the date of the order to remedy. The Code Enforcement Officer shall be permitted, but not required, to cause the order to remedy, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work being performed at the affected property personally or by registered mail or certified mail within five days after the date of the order to remedy; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the compliance order.

- B. Appearance tickets. The Code Enforcement Officer and each inspector are authorized to issue appearance tickets for any violation of the Uniform Code.
- C. Penalties. In addition to such other penalties as may be prescribed by state law,
 - (1) Any person who violates any provision of this article or any term, condition, or provision of any building permit, certificate of Occupancy, certificate of compliance, temporary certificate, stop-work order, operating permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this article, shall be punishable by a fine of not more than \$250 per day of violation, or imprisonment not exceeding 15 days, or both; and
 - (2) Any person who violates any provision of the Uniform Code, the Energy Code or this article, or any term or condition of any building permit, certificate of Occupancy, certificate of compliance, temporary certificate, stop-work order, operating permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this article, shall be liable to pay a civil penalty of not more than \$250 for each day or part thereof during which such violation continues. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of this Town of Elma.
- D. Injunctive relief. An action or proceeding may be instituted in the name of this Town of Elma, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this article, or any term or condition of any building permit, certificate of Occupancy, certificate of compliance, temporary certificate, stop-work order, operating permit, order to remedy, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this article. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this article, or any stop-work order, order to remedy or other order obtained under the Uniform Code, the Energy Code or this article, an action or proceeding may be commenced in the name of this Town of Elma, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subsection shall be commenced without the appropriate authorization from the Code Enforcement Officer/Elma Town Board of this Town of Elma.
- E. Remedies not exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in § 52-20 (Stop-work orders) of this article, in any other section of this article, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in § 52-20 (Stop-work orders) of this article, in any other section of this article, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in Subdivision (2) of § 382 of

§ 52-31 the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether § 52-35 prior to, simultaneously with, or after the pursuit of any penalty specified in Subdivision (2) of § 382 of the Executive Law.

§ 52-32. Fees.

A fee schedule shall be established by resolution of the Elma Town Board of this Town of Elma. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of building permits, amended building permits, renewed building permits, certificates of Occupancy, certificates of compliance, temporary certificates, operating permits, fire safety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this article.

§ 52-33. Intermunicipal agreements.

The Elma Town Board of this Town of Elma may, by resolution, authorize the Code Enforcement Officer of this Town of Elma to enter into an agreement, in the name of this Town of Elma, with other governments to carry out the terms of this article, provided that such agreement does not violate any provision of the Uniform Code, the Energy Code, Part 1203 of Title 19 of the NYCRR, or any other applicable law.

§ 52-34. Partial invalidity.

If any section of this article shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder of this article.

§ 52-35. When effective.

This article shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with § 27 of the Municipal Home Rule Law.

Chapter 56

BUILDINGS, UNSAFE

§ 52-35

[HISTORY: Adopted by the Town Board of the Town of Elma 1-3-1990.²⁷ Amendments noted where applicable.]

§ 52-35

GENERAL REFERENCES

Building construction — See Ch. 52.

Fire prevention — See Ch. 79.

Electrical standards — See Ch. 71.

Flood damage prevention — See Ch. 82.

27. Editor's Note: This ordinance superseded former Ch. 56, Buildings, Unsafe, adopted 12-3-1969 by Ord. No. 11.

§ 56-1. Legislative findings and purpose.

It is the finding of this Board that vacant and abandoned buildings and structures which are not properly secured at entrances, windows and other openings serve as attractive nuisances for children who may and oftentimes are injured therein. Dilapidated or collapsed buildings and structures are frequently infested with rodents, thereby creating a significant health hazard to the community. Such buildings are, in addition, places of congregation by vagrants, transients and other trespassers. Also, buildings which may be approved for specific uses and are not maintained and kept in compliance with federal, state or local laws, rules or regulations provide significant safety and health hazards to the public and any employees. The purpose of this chapter is to provide for the safety, health, protection and general welfare of persons and property within the Town of Elma by requiring the repair, securing or removal and demolition of unsafe buildings and collapsed structures within said Town, in accordance with the provisions of Subdivision 16 of § 130 of the Town Law and § 78-b of the General Municipal Law, as now enacted or hereafter amended.

§ 56-2. Definitions.

For the purpose of this chapter, the following terms shall have the meanings set forth in this section, unless otherwise expressly stated:

BUILDING INSPECTOR — The Building Inspector of the Town of Elma, his assistant or such other person as may be appointed by the Town Board to enforce the provisions of this chapter.

UNSAFE BUILDING — Any building, structure or portion thereof which is determined by the Building Inspector to be structurally unsound, unsanitary or not provided with adequate ingress and egress or which constitutes a fire hazard or which has become unsafe by reason of damage by fire, the elements, age or general deterioration or which, in relation to an existing use, constitutes a hazard to public health, safety or welfare by reason of inadequate maintenance, dilapidation, obsolescence or abandonment or for any other cause which is otherwise dangerous or unsafe to the public or to human life.

§ 56-3. Inspections; report.

- A. Where, in his own opinion or upon receipt of information of the possible existence and location of an unsafe building or collapsed structure or a building in need of repair in the Town of Elma which is or may become dangerous or unsafe to the general public or to human life, the Building Inspector shall cause or make an investigation of the premises, and an inspection report shall be prepared containing the following:
 - (1) A description of the premises.
 - (2) A statement of the particulars, if any, in which the building or structure is unsafe.
 - (3) A recommendation with respect to the building's or structure's repair or demolition and removal.
- B. Said report shall be filed in the office of the Building Inspector and with the Clerk of the Town Board.

§ 56-3

§ 56-4

§ 56-4. Town Board action upon consideration of report.

The Town Board shall thereafter consider such report and by resolution determine, if in its opinion the report so warrants, that such building is potentially unsafe and dangerous and order that the Building Inspector cause a written notice to be prepared and served in the manner provided herein.

§ 56-4

§ 56-5

§ 56-5. Notice of unsafe building.

Upon Town Board resolution determining the existence of a potentially unsafe building, the Building Inspector shall cause a written notice to be prepared containing the following:

- A. A description of the premises.
- B. A statement of the particulars in which the building or structure is unsafe or dangerous.
- C. A date, time and place for a hearing before the Town Board in relation to such dangerous or unsafe building, which hearing shall be scheduled not less than five business days from the date of personal service or mailing of the written notice.
- D. A statement that an order may issue from the hearing requiring repair or demolition, that failure to appear may result in an order of repair or demolition and that the person served has the right to be represented by legal counsel at the Town Board hearing.

§ 56-5

§ 56-6

§ 56-6. Service of notice.

- A. The aforementioned written notice shall be served on the owner of record or one of the owner's executors, legal representatives, agents, lessees or any other person having a vested or contingent interest in the subject property, either personally or by registered mail addressed to the intended recipient's last known address, if any, as shown by the records of the Town's receiver of taxes or the records in the office of the County Clerk. In addition, a copy of said notice shall be securely affixed or posted on the unsafe building in a conspicuous location.
- B. In the event that one or more adult persons are actually residing and have a lawful interest in the unsafe building at the time of issuance of the Town Board's order aforementioned hereinabove in this chapter, a copy of the written notice provided herein shall be served upon any one such adult person if such person can reasonably be found.
- C. In the event that the whereabouts, last known address or tax address of the owner of the unsafe building and any other person having an interest therein, as defined in Subsection A hereinabove, are unknown and cannot be ascertained after the exercise of reasonable diligence by the Building Inspector, the Building Inspector shall execute an affidavit to that effect which shall be filed in the office of the Building Inspector and a copy with the Clerk of the Town Board. In such case, notice shall be served by the affixing or posting of a copy of the aforementioned written notice on the unsafe building in a conspicuous location.

§ 56-7. Hearing findings.

- A. After the holding of a hearing before the Town Board in relation to such dangerous or unsafe building as provided for in § 56-5, Notice of unsafe building, the Town Board shall, within 20 days of the hearing, make a finding that the potentially unsafe building is not unsafe or dangerous or otherwise under the provisions of this chapter or that the unsafe building must be repaired, secured or demolished and removed.
- B. In the event that the unsafe building is determined to require repair, securing or demolition, the Town Board shall direct the Building Inspector to cause a written notice to be prepared containing the following:
 - (1) A description of the premises.
 - (2) A statement of the particulars in which the building or structure is unsafe or dangerous as determined by the Town Board at a public hearing of such Board on the date so held.
 - (3) An order requiring that the building or structure be made safe and secure or demolished and removed, which order may outline the manner in which the building or structure is to be made safe and secure.
 - (4) An order requiring that the repair, securing or demolition of the building or structure be commenced within 10 days of the date of personal service or mailing of the written notice and that such repair or demolition and removal be completed within 30 days after the date required for the commencement of the repair or demolition, unless the Town Board, for good cause shown and in its discretion, extends such time.
 - (5) A statement that in the event of the failure, neglect or refusal to make safe and secure or demolish and remove the unsafe building and in the event that any such building is being or shall be used for any purpose requiring a permit, license or other Town Board approval, the Town Board is empowered and authorized to revoke any said approval, permit or license as well as to provide for the security and repair of the unsafe building or for its demolition and removal, to assess all expenses thereof against the land on which it is located and to institute legal action to recover the costs of repair and/or securing or demolition and removal of said unsafe building, as well as legal fees and any expenses incidental to the securing of the unsafe building, including but not limited to surveying, engineering and architectural expenses.

§ 56-7

§ 56-8

§ 56-8. Filing of notice ordered pursuant to hearing.

- A. A copy of the written notice ordered pursuant to § 56-7, Hearing findings, served as provided in § 56-6, shall be filed in the office of the County Clerk of the County of Erie. The filing of said notice shall have the same effect as the filing of a notice of pendency as provided in this section or Subdivision 16 of § 130 of the Town Law.
- B. A notice filed in accordance with Subsection A hereinabove shall be effective for a period of one year from the date of filing; provided, however, that it may be vacated upon the order of a judge or justice of a court of record or upon consent of the Town Attorney or his deputy. Upon the presentation and filing of such consent or a certified copy of such order in the office of the County Clerk of the County of Erie, the aforementioned notice and any record or docket thereof shall be marked as canceled of record by said County Clerk.

§ 56-8

§ 56-9

§ 56-9. Failure to comply; repair or removal by Town.

In the event that the owner of record of the unsafe building or any other person as may have been served with notice pursuant to § 56-6 fails or refuses to comply with the order to make safe and secure or demolish and remove said unsafe building and after a hearing has been held before the Town Board as provided in §§ 56-6 and 56-7, the Town Board may, by resolution duly adopted, provide for the security and repair or demolition and removal of said building either by employees of the Town or by contract.

§ 56-9

§ 56-10

§ 56-10. Emergency powers.

If the Town Board finds that there presently exists a clear and imminent danger to the life, safety or health of any person or property unless an unsafe building or structure is immediately repaired and secured or demolished and removed, the Town Board may, by resolution, authorize the Building Inspector to immediately cause the securing and/or repair or demolition and removal of such unsafe building either by employees of the Town or by contract.

§ 56-10

§ 56-11

§ 56-11. Reimbursements for costs incurred by Town.

The Town shall be reimbursed for all costs and expenses, including but not limited to attorney's fees, engineer's fees and architect's fees, incurred by it in connection with the proceedings to make safe and secure or demolish and remove any building or structure pursuant to this chapter, in addition to the actual cost of securing and/or repairing or demolishing and removing said building or structure. Such costs and expenses may be assessed against and recovered from the land on which the building or structure was located in the same manner as provided in Article 15 of the Town Law for the levy and collection of a special ad valorem levy. The Town may also institute a civil action to recover all said costs and expenses from the owner of the affected property.

§ 56-11

§ 56-12

§ 56-12. Interference with officials.

It shall be unlawful for any person, whether or not interested in the property affected by this chapter, to interfere with, obstruct or hinder the Building Inspector or his representative or any person acting on his behalf in performing his duties as set forth in this chapter.

§ 56-12

§ 56-13

§ 56-13. Penalties for offenses.

Any person or persons, other than those duly authorized by the Building Inspector, removing from a building or structure any notice prescribed by this chapter or committing an offense against the provisions of § 56-12 hereof are guilty of a violation punishable by a fine not to exceed \$250 or by imprisonment for a period not to exceed 15 days for each such offense, or by both such fine and imprisonment or such other fine or period of imprisonment as may be established by resolution of the Town Board from time to time.

Chapter 57
CANNABIS

§ 56-13

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

§ 56-13

ARTICLE I

**Cannabis Retail Dispensary and On-Site Consumption Establishment Opt-Out
[Adopted 10-20-2021 by L.L. No. 1-2021]****§ 57-1. Legislative intent.**

It is the intent of this article to opt out of allowing cannabis retail dispensaries and on-site cannabis consumption sites in the Town of Elma that would otherwise be allowed under Cannabis Law Article.

§ 57-2. Statutory authority.

This article is adopted pursuant to Cannabis Law § 131 which expressly authorizes the Town Board to adopt a local law requesting the Cannabis Control Board to prohibit the establishment of cannabis retail dispensary licenses and/or on-site consumption licenses within the jurisdiction of the Town and is subject to a permissive referendum, the procedure of which is governed by Municipal Home Rule Law § 24.

§ 57-3. Local opt-out.

The Town Board of the Town of Elma hereby opts out of allowing cannabis retail dispensaries and on-site cannabis consumption sites from being established and operated within the Town's jurisdiction.

§ 57-4. Severability.

If any clause, sentence, paragraph, subdivision, or part of this article or the application thereof to any person, firm or corporation, or circumstance, shall be adjusted by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this article or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

§ 57-5. Permissive referendum/referendum on petition.

This article is subject to a referendum on petition in accordance with Cannabis Law § 131 and the procedure outlined in Municipal Home Rule Law § 24.²⁸

§ 57-6. When effective.

This article shall take effect immediately upon filing with the Secretary of State.

28. Editor's Note: No valid petition for referendum was filed.

Chapter 59
COLLISION SHOPS

§ 57-6

§ 57-6

[HISTORY: Adopted by the Town Board of the Town of Elma 3-7-1984. Amendments noted where applicable.]

GENERAL REFERENCES

Dealers in motor vehicles — See Ch. 60.

Fire prevention — See Ch. 79.

Electrical standards — See Ch. 71.

Zoning — See Ch. 144.

§ 59-1. Statutory authority; purpose.

- A. The Town Board of the Town of Elma pursuant to the provisions of § 130, Subdivision 15, of the Town Law and to promote the public health, safety and general welfare of its citizenry does enact the following, to be designated Chapter 59 of the Elma Code, to be known as and referred to as the "Collision Shop Ordinance."
- B. The Town Board, before enacting this chapter, has investigated into the locations, facilities, practices and numbers of collision shops within the Town of Elma, including inspections by the Building Inspector and complaints by the citizenry.

§ 59-1

§ 59-2

§ 59-2. Definitions.

As used in this chapter, the following words shall have the meanings indicated:

MOTOR VEHICLE BODY REPAIR SHOP — Any establishment, building or part thereof or other place where there is carried on the business of repairing, painting, replacing and substituting parts of automobile bodies.

§ 59-3. Shop requirements.

All motor vehicle body repair activity must secure a permit as provided herein and must be conducted in a structure providing adequate safety for employees working on vehicles, including, but not limited to, the following:

- A. There must be adequate ventilating equipment and painting must be done in accordance with the requirements of New York State labor regulations with respect to mechanical ventilating equipment, breathing equipment and the like.
- B. Walls must have a two-hour fire-rating capacity, as defined in the State Construction Code.
- C. Fire doors must be provided between the various interior sections or areas.
- D. Surface areas, interior and exterior, must be hard-surfaced with either concrete, asphalt or the like.
- E. There must be adequate and sufficient exit doors in the exterior walls.
- F. The Elma Fire Code or its successor must be complied with.²⁹
- G. Fencing requirements of the Elma Code must be complied with. All outdoor storage will be screen-fenced. The Town Board may require fencing for a particular location due to unusual conditions.
- H. Any structure and premises used as a motor vehicle body repair shop must comply with the Environmental Conservation Act and the Erie County Sanitary Code and any regulations issued thereunder.
- I. No portion of a building licensed for use as an automobile body repair shop may be used as a residence or as an office facility, except as an office in connection with the said repair shop.

29. Editor's Note: See Ch. 79, Fire Prevention.

§ 59-3

§ 59-4

§ 59-4. Equipment.

Each motor vehicle body repair shop must have proper and adequate tools and equipment. Any acetylene cutting and welding equipment and spray booths must be constructed and maintained in compliance with the Fire Code. Electrical wiring must be approved by the Fire Code Enforcement Officer or by a representative of Underwriters Laboratories. All repair work shall be done indoors.

§ 59-4

§ 59-5

§ 59-5. Location restricted.

Notwithstanding any other provision of the Elma Code, no structure or building used for a collision shop shall be located within 100 feet of a residential zone as measured from side lot line.

§ 59-5

§ 59-6

§ 59-6. State registration required.

All such shops must be duly registered as repair shops by the Commission of Motor Vehicles.

§ 59-6

§ 59-7

§ 59-7. Application for permit.

- A. Applications for permits to operate a motor vehicle body repair shop shall be made on a form prepared by the Building Inspector. Such applications shall be filed with the Town Clerk, who shall refer them to the Building Inspector for processing.
- B. The Building Inspector shall submit said application to the Town Board, together with his recommendation for approval or disapproval. In the event of disapproval, he shall state reasons therefor. The Town Board shall approve or disapprove said application, giving the reasons for its action.
- C. All applicants must pay a fee, to be fixed from time to time by resolution of the Town Board, when filing the application with the Town Clerk.

§ 59-7

§ 59-8

§ 59-8. Penalties for offenses.

- A. The Building Inspector shall enforce the provisions of this chapter. Any violation hereof shall be subject to a fine of \$250 and imprisonment for not more than 15 days, or both. A violation shall consist of a failure or refusal to comply with the requirements of §§ 59-3, 59-4, 59-5, 59-6 and 59-9 of this chapter.
- B. In addition thereto, the Town Board may revoke any such permit for persistent or extreme violations by giving 10 days' written notice of such revocation. A permittee may request a hearing on such revocation and shall be entitled to counsel at such hearing and to present evidence and witnesses and to cross-examine witnesses thereat.

§ 59-8

§ 59-9

§ 59-9. Nonconforming shops.

- A. All collision shops in existence or operation at the time of the adoption of this chapter must cease operating at the expiration of three years from the date of such adoption or comply with the provisions hereof within said three-year period.
- B. Nothing in this section shall limit the Town of Elma from proceeding with a civil action or injunction against such permittee.

Chapter 59A

COMMUNICATION FACILITIES

§ 59-9

§ 59-9

[HISTORY: Adopted by the Town Board of the Town of Elma 3-5-1997. Amendments noted where applicable.]

GENERAL REFERENCES

Site plan review — See Ch. 117.

Zoning — See Ch. 144.

§ 59A-1. Intent.

The Town of Elma recognizes the increased demand for wireless communication transmitting facilities and other similar technologies and the need for the services they provide. Often, these facilities require the construction of a communications tower and/or similar facilities. The intent of this chapter is to protect the interests of the residents of the Town in requiring the shared use of tower space and the placement of antennas on existing structures, when available and when feasible, to reduce the number of tower placements in the future. It is the intent of the Town to protect the interests of the residents in properly siting towers and/or similar facilities in a manner consistent with sound land use planning and to regulate communications facilities in accordance with the guidelines of the Telecommunications Act of 1996 by:

- A. Accommodating the need for telecommunication towers/antennas and other similar technologies while regulating their location, height and number in the community.
- B. Minimizing adverse visual impacts of these towers/antenna through proper design, siting and screening.
- C. Preserving and enhancing the positive aesthetic qualities of the built and natural environment in the Town of Elma.
- D. Avoiding potential damage to adjacent properties from tower failure, falling ice and other falling debris, through engineering and proper siting.
- E. No new tower or structure may be established if there is space available on an existing tower or structure, if the existing tower or structure can structurally hold additional antenna array, if there is no interference with the placement of antennas and if the space on the existing tower or structure is available.
- F. Maximizing use of any new or existing Town-approved communications tower to reduce the number of towers needed.
- G. Maximizing the need for the health, safety and general welfare of the citizens of the Town of Elma, to the extent possible.

§ 59A-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY STRUCTURE — A nonhabitable accessory building or structure serving or being used in conjunction with a communications tower and/or similar structure and usually located on the same lot as the communications tower. Examples of such structures include utility or transmission equipment storage sheds or cabinets.

ANTENNA — A system of electrical conductors that transmit and/or receive frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, personal communication services (PSC) and microwave communications.

COLOCATED ANTENNAS — Telecommunications facilities which utilize existing towers, buildings or other structures for placement of antennas and do not require construction of a new tower.

FALL-DOWN ZONE — The radius around a tower within which all portions of the tower and antenna would fall in the event of a structural failure of the tower and/or its mounting/anchoring systems.

GUYED TOWER — A communications tower that is supported, whole or in part, by guy wires and ground anchors.

MONOPOLE TOWER — A communications tower consisting of a single pole, constructed without guy wires and ground anchors.

SELF-SUPPORTING TOWER — A communications tower that is constructed without guy wires and ground anchors.

TELECOMMUNICATIONS FACILITIES AND OTHER RELATED TECHNOLOGIES — Towers, similar technologies and/or antennas and/or microwave dishes and accessory structures together used in connection with the provisions of cellular telephone service, personal communications services, digital and/or data communication services, paging services, radio and television broadcast services and similar broadcast services.

TOWER — A structure designed to support antennas. It includes, without limit, freestanding towers, guyed towers, monopoles and similar structures.

§ 59A-3. Building permit required; location categories.

No communications tower and/or similar facilities shall be sited, located, constructed, erected or modified without the issuance of a building permit and such other permits or approvals as are prescribed in this chapter. Procedures in § 59A-9 of this chapter must be followed.

- A. Colocated/existing structure antennas. An antenna that is to be attached to an existing communications tower which was approved by the Town of Elma, smokestack, water tower or other structure is permitted in all zoning districts. The antenna is permitted upon the approval of a special tower use permit by the Town Board.
- B. Noncolocated/new structure antennas or unapproved existing towers.
 - (1) An antenna that will not be mounted on an existing structure as defined above or is more than 50 feet higher than the existing structure on which it is mounted or is proposed for an unapproved existing structure is permitted upon approval after a public hearing by Town Board only after site review by the Planning Board. The height restriction may be waived by the Town Board upon proof by the applicant that technological reasons exist for the increase in height. If the structure has not been approved, then the first step will be for the structure to comply with all building and Code laws and to demonstrate compliance by review of the Planning Board.
 - (2) The tower must be set back a minimum of the height of the tower from all property lines, and any existing building. This may be waived by the Town Board upon good cause shown.
 - (3) The SEQRA review process for industrial-zoned property and all municipal-owned property, with the exception of property within a park or recreational area, shall be governed by the facts and situation of the proposed action. If it is an unlisted action, a coordinated review is required. With a park, recreational or historic area, the SEQRA shall be treated as if it is a Type I review. In all other zoning areas, the SEQRA shall be treated as a Type I review.

§ 59A-4. Tower special use permits application materials.

- A. All applicants for a tower special use permit shall make written application to the Building Inspector. This application must include the following:
- (1) Town-supplied tower special user permit application form.
 - (2) Proof of notification (certified-mail-return receipts to be given to the Town by the applicant) of all property owners within 500 feet of the boundaries of the property that the tower is to be constructed, as well as notification of the surrounding communications tower owners to explore colocation.
 - (3) Appropriate fee as the Town Board from time to time sets.
 - (4) Site plan application forms provided by the Town, including long form environmental assessment form (EAF).
 - (5) Site plan.
 - (a) Site plan using the Town site plan application, prepared to scale and in sufficient detail and accuracy showing at a minimum the following:
 - [1] The exact location of the proposed tower, together with guy wires and guy anchors, if applicable.
 - [2] The maximum height of the proposed tower.
 - [3] A detail of tower type (monopole, guyed, freestanding or other) along with the maximum wind load area in square feet, at the maximum wind speed in miles per hour, of the tower, as published by its manufacturer.
 - [4] The color or colors of the tower.
 - [5] The location, type and intensity of lighting on the tower.
 - [6] Proof of landowner's consent if the applicant will not own the property. (A copy of the complete lease agreement must also be provided if the applicant will not own the property.)
 - [7] The property boundaries. (A copy of a property survey must also be provided.)
 - [8] The location of all structures on the property and all structures on any adjacent property within 500 feet of the property lines, together with the distance of these structures to the tower. All buildings and other structures to be located on the same property as a communications tower shall conform with the setbacks established for the underlying zoning district.
 - [9] Communications towers or similar structures shall not encroach into or through any established, public or private airport approach path, as established by the Federal Aviation Administration (FAA). Each applicant to construct or alter a communications tower shall include proof of application for approval from the FAA and shall be submitted with each application. Based upon the location or height of the proposed tower, the Town may require a statement of no objection from all surrounding airports, public or private. A building permit shall not be issued until FAA approval is obtained. Any approval of a tower special use permit, for a proposed new tower or similar technology, shall be conditioned upon FAA approval and any conditions set by the FAA and the Town. The applicant must supply copies of all forms submitted to FAA, including Form 7460-1.
 - [10] The names and addresses of adjacent landowners as supplied by the Town upon the request

of the applicant.

- [11] The location, nature and extent of any proposed fencing and landscaping or screening.
 - [12] The location and nature of proposed utility easements and access road, if applicable. All towers shall have an access road suitable for emergency vehicles to utilize in the event of an emergency. Further, each tower shall have a fire hydrant within sufficient distance to service the tower and accessory buildings. A fire-suppression system may be required if it is necessary to protect the surrounding area and/or neighborhood from damage and/or injury.
 - [13] Buildings elevations of accessory structures or immediately adjacent structures and/or buildings.
 - [14] Adequate inventory report specifying existing communication facility sites and structures of height exceeding 75% of the height of the proposed tower within a five-mile radius from the proposed site. The inventory report shall contain an evaluation of opportunities for shared use as an alternative to proposed location. The applicant must demonstrate that the proposed telecommunication facility or similar facility cannot be accommodated on existing telecommunication facility sites in the inventory due to one or more of the following reasons:
 - [a] The planned equipment would exceed the structural capacity of existing and approved telecommunication facilities or other structure, considering existing and planned use for those facilities.
 - [b] The planned equipment would cause radio-frequency interference with other existing or planned equipment, which cannot be reasonably prevented.
 - [c] Existing or approved telecommunication facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably.
 - [d] Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures.
 - [e] The property owner or owner of the existing tower or other structure refuses to allow such colocation.
 - [15] A report prepared by a New York State licensed professional engineer, which describes the height and design, including a cross section of the structure; demonstrates the tower's compliance with applicable structural standards; and describes the tower's capacity, including examples of the number, type and location by height on the tower of antennas it may accommodate. In the case of an antenna mounted on an existing structure, the report shall indicate the existing structure's suitability to accept the antenna and proposed method of affixing the antenna to the structure. Complete details of all tower, fixtures and couplings and the point of attachment shall be indicated on a design plan.
 - [16] Visual impact analysis shall be prepared by a landscape architect registered in New York State. The Town, at the expense of the applicant, may employ consulting assistance to review the findings and conclusions of the visual impact analysis as well as any other expert necessary to process the application.
 - [17] Copies of all leases to each company planned to be colocated.
- (b) The applicant shall provide to the Town a simulated picture and/or drawing of what the proposed tower or similar structure will look like to the surrounding area.

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- (6) Before and after propagation studies prepared by a qualified radio frequency engineer, demonstrating existing signal coverage, contrasted with the proposed signal coverage resulting from the proposed telecommunications facility. Further, the radio frequency engineer must certify that the cumulative emissions from all antennae proposed to be located at the proposed site meet federal guidelines.
- (7) A search ring prepared by a qualified radio frequency engineer and overlaid on an appropriate background map, demonstrating the area within which the telecommunications facility needs to be located in order to provide proper signal strength and coverage to the target cell. The applicant must be prepared to explain to the Planning Board and Town Board why it selected the proposed site, discuss the availability or lack of availability of a suitable structure within the search ring which would have allowed for a colocated antenna(s) and to what extent the applicant explored locating the proposed tower in a more intensive use district. Correspondence with other telecommunications companies concerning colocation is part of this requirement.
- (8) The Town upon reviewing the application, may request reasonable additional visual and aesthetic information as it deems appropriate on a case-by-case basis. Such additional information may include, among other things, enhanced landscaping plans, line-of-sight drawings and/or visual simulations from viewpoints selected by the Town Board and/or Planning Board. Line-of-sight drawings and visual simulations are mandatory for applications in residential and neighborhood commercial zoning districts for all new towers.
- (9) In historic areas and important preservation/conservation areas, including parks and recreational areas, the Town will require additional site plan review and tower special use permits. These requirements can include, but are not limited to, specially designed towers, additional screening, greater setbacks and improved landscaping. These areas for siting should be avoided to the maximum extent possible.
- (10) The Town shall look at the surrounding use of properties.
- (11) The proposed locations and number of towers and/or antennas proposed for each company within the boundaries of the Town.
- (12) Explanation through documentation of and/or testing of what the proposed coverage area is, indicating receiving distances and sending distances from each tower; also indicating where new towers are being proposed.
- (13) Locations of towers within six miles.
- (14) Written projected need for additional towers in the Town within the next five years.

§ 59A-5. Communications facility standards.

The following criteria will be considered by the Town prior to the approval/denial of a request for a special tower use permit. The criteria listed may be used as a basis to impose reasonable conditions on the applicant.

A. Siting preferences.

- (1) The Town may express a preference that the proposed telecommunications facility and/or similar facility or technology be located in an alternate technologically feasible and available location or multiple locations. A guideline for the Town's preference, from most favorable to least favorable districts/property, is as follows:
 - (a) Property with an existing structure suitable for colocation.
 - (b) Municipal and government property.
 - [1] Town of Elma owned property.
 - [2] Any other municipal- or government-owned property.
 - [3] Industrial zoning districts.
 - [4] Commercial zoning districts not located in or near residential districts.
 - [5] Residential districts and historic district and important preservation/conservation areas, including parks and recreational sites owned by private homeowners and municipalities. The maximum height of a tower in these zoning districts is 50 feet. An area variance for height will be required from the Zoning Board of Appeals to exceed this height, prior to initial review by Planning Board. Final approval is required by the Town Board after a public hearing.
- (2) Any request by the Town for information on a preferred alternate site shall not unreasonably delay the application.

B. Aesthetics. Telecommunications facilities or similar structures shall be located and buffered to the maximum extent which is practical and technologically feasible to help ensure compatibility with surrounding land uses. In order to minimize any adverse aesthetic effect on neighboring residences to the extent possible, the Planning Board may impose reasonable conditions on the applicant, including the following:

- (1) The Town may require a monopole or guyed tower (if sufficient land is available to the applicant) instead of a freestanding tower.
- (2) The Town requires reasonable landscaping consisting of trees or shrubs to screen the base of the tower and/or to screen the tower to the extent possible from adjacent residential property. Existing on-site trees and vegetation shall be preserved to the maximum extent possible.
- (3) The Town may require additional site plan requirements, such as specially designed towers, additional screening, greater setbacks and improved landscaping to address aesthetic concerns.
- (4) The Town may require the applicant to show that he has made good faith efforts to colocate on existing towers or tower available and appropriate structures and/or to construct new towers near existing towers in an effort to consolidate visual disturbances. However, such request shall not unreasonably delay the application.
- (5) Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements. Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Towers shall be galvanized finish or painted to be aesthetically pleasing and/or

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less disturbing to the surrounding area. Any lights which may be required by (FAA) shall not consist of strobe lights, unless specifically mandated by FAA.

- (6) No tower shall contain any signs or advertising devices. A small sign on the fencing shall be placed to identify the ownership of the facility and a telephone number for emergencies.
- (7) The applicant must submit a copy of its policy regarding colocation on the proposed tower with other potential future applicants. Such policy should allow colocation under the following conditions:
 - (a) The new antennas and equipment do not exceed structural loading requirements, interfere with Town space used or to be used by the applicant nor pose any technical or radio-frequency interference with existing equipment;
 - (b) The party desiring to colocate pays the applicant an appropriate and reasonable sum to colocate; and
 - (c) The party desiring to colocate has a similar policy of colocation for the applicant.
- (8) The Town may require a fall zone surrounding any support towers to be equal to the height of the structure and any antennas attached thereto. The Town Board may shorten the fall zone based upon the type of tower and certified technological data supplied by the applicant. The entire fall zone may not include public roads and must be located on property either owned or leased by the applicant or for which the applicant has obtained an easement, nor can this land contain any structure other than those associated with the telecommunications facilities, except as further allowed in this subsection, and may not be located within any setback area established by this chapter. If the facility is attached to an existing structure, fall-zone requirements may be modified by specific permission of the Town Board.

C. Radio-frequency effect. The Planning Board may impose a condition to the applicant that the communication antennas be operated only at Federal Communications Commission (FCC) designated frequencies and power levels and/or Environmental Protection Agency (EPA) technical exposure limits and that the applicant provide competent documentation to support that maximum allowable frequencies, power levels and exposure limits for radiation will not be exceeded.

D. Traffic, access and safety.

- (1) A road, turnaround and one parking space shall be provided to assure adequate emergency and service access such that service vehicles will not have to back out onto a public thoroughfare. Maximum use of existing roads, public or private, shall be made. The use of public roadways or road rights-of-way for the siting of a tower or antenna or accessory structures is strictly prohibited.
- (2) All towers and guy anchors, if applicable, shall be enclosed by a fence not less than eight feet in height or otherwise sufficiently protected from trespassing or vandalism.
- (3) The applicant must comply with all applicable state and federal regulations, including but not limited to FAA and FCC regulations.
- (4) Motion-activated or staff-activated security lighting around the base of the tower or accessory structure entrance may be provided if such lighting does not project off the site. Such lighting should only occur when the area within the fenced perimeters has been entered.
- (5) There shall be no permanent steps or climbing pegs within 20 feet of the ground of any proposed tower even if surrounded by a fence.

E. Removal of tower. The applicant shall sign an agreement, in writing, to remove the tower within six months if the telecommunications facility becomes obsolete or ceases to be used for its intended purpose for six consecutive months. The applicant shall be required to notify the Town Board of its cessation of use of the

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tower within the six-month period and indicate that it will not be using the tower. The Planning Board shall require the applicant to provide a demolition bond (in an amount to be recommended by the Planning Board to the Town Board) for the removal of the telecommunications facility in the event that the applicant fails to remove it as required above. The Town must receive the demolition bond listing the Town as assignee prior to any building permit being granted. The sufficiency of the demolition bond shall be examined at least every five years and at the time of renewal and/or modifying the special use permit. The Town does have the option of negotiating with the company and to acquire the tower rather than having it demolished.

- F. Structural safety. During the application process and every other year after construction of the tower, the applicant/owner shall provide a certification from a qualified professional engineer registered in the State of New York, certifying that the tower meets applicable structural safety standards. This certification must be filed in the Town Clerk's office every other year. If no certification is filed at the appropriate time, then the tower is deemed abandoned.
- G. Maintenance of telecommunications facility. All telecommunications facilities shall be maintained in good order and repair. This shall be the sole responsibility of the applicant.
- H. The Town Board may require that towers and antenna(s) be set back a sufficient distance from adjacent property lines and/or structures to safeguard the general public and/or adjacent property from damage in the event of tower failure or falling debris, such as ice. It is presumed that the fall-down zone should be equal to the height of the tower and any antennas attached to the tower. The fall-down zone should be the distance required from any adjacent residential property line and at least 50 feet from any adjacent property line in any other district and any off-site structure. The Town Board may waive any portion of this upon a showing of technical data that a different fall-down zone upon receipt of information from the applicant which demonstrates the safety of the general public or adjacent property is protected.
- I. The size of a leased or owned lot shall be, at a minimum, sufficiently large to include the entire fall zone. A lot leased or owned for the purpose of construction of a tower as part of telecommunications facility or related technology shall not result in the creation of a nonconforming lot.
- J. The municipality, at the expense of the applicant, may employ its own consulting assistance to review the findings and conclusions of the applicant.

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§ 59A-6. Exemptions.

- A. The tower and antennas may be repaired and maintained without restriction.
- B. Exemptions shall be as follows:
 - (1) Antennas used solely for residential-household television and radio reception.
 - (2) Satellite antennas measuring two meters or less in diameter and located in commercial districts and satellite antennas one meter or less in diameter regardless of location. FCC rule regarding preemption of local zoning regulation for satellite antennas, 47 CFR Part 25.

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§ 59A-7. Miscellaneous.

- A. The Planning Board may recommend to the Town Board to waive or vary any requirements in this chapter for good cause shown.
- B. Any application requiring a special tower use permit and any other approvals from another Board (i.e., Zoning Board of Appeals) must receive Planning Board review prior to any other Board approvals.
- C. This chapter is meant to control towers and similar facilities in the Town unless specifically referenced in this chapter, other sections of the Zoning Law³⁰ are intended to be inapplicable (such as height limitations normally required in the relevant zoning district).
- D. Any facilities receiving a special tower use permit, that subsequently does not meet the requirements of that permit, shall have its permit revoked, and the tower shall be removed within 90 days of notification by the Town.
- E. The Town may engage any expert or consultant, at the applicant's expense, necessary, in the opinion of the Town, for the Town to adequately review and process the application.

30. Editor's Note: See Ch. 144, Zoning.

§ 59A-8. Guidelines.

All applications for a new tower or to place a new antenna on an existing structure will be subject to the following guidelines:

- A. Nonionizing electromagnetic radiation standards (NIER) A new source of NIER or increase in NIER from an existing source, when combined with existing sources of NIER, shall not expose the general public to ambient radiation exceeding that defined by the federal government from time to time; provided, however, that if a federal or local standard is adopted that is more stringent than the presently defined standard that such more stringent standard shall apply.
- B. No special use permit or renewal thereof or modification of the conditions of a current special use towers permit relating to a telecommunications facility shall be authorized by the Town unless it finds that such telecommunication facility:
 - (1) Is necessary to meet current or expected demands for the services supported by the telecommunication facility for that applicant's network.
 - (2) Conforms with all applicable regulations promulgated by the Federal Communications Commission.
 - (3) Is designed and constructed in a manner which minimizes its visual impact to the extent practical.
 - (4) Complies with all other requirements of this chapter.
 - (5) Is the most appropriate site within the technically feasible area for the location of the telecommunication facility.

§ 59A-9. Procedures.

- A. Procedures for a municipally owned parcel of land, excluding parkland or recreational land.
 - (1) The applicant will apply for building permit and special use tower permit through the Building Department.
 - (2) The applicant will supply 20 copies of application and supporting documents to the Town Clerk at least 20 days prior to the Planning Board or Town Board Meeting that the applicant wishes to be heard at. The applicant would pay all applicable fees 20 days prior to any scheduled date.
 - (3) The applicant appears at the Planning Board for site plan and review, for a recommendation to the Town Board. Notice to surrounding property owners within 500 feet of the proposed tower is required and should be supplied by applicant.
 - (4) After reviewing, the Planning Board makes a recommendation to the Town Board as to whether the site is viable and necessary and what conditions it would place on the tower if approved.
 - (5) The applicant would appear at the Town Board for review and disposition of the proposal after a public hearing.
 - (6) The maximum height of any tower in any residential area, not owned by a municipality in these zoning districts, is 50 feet. An area variance for height may be required from the Zoning Board of Appeals to exceed this height. This provision may be waived by the Town Board if supported by technological materials supplied by the applicant. Final approval is required by the Town Board.
 - (7) The applicant shall provide a demolition bond prior to final approval for removal after abandonment of the tower for a period of six months or other suitable documentation upon approval of the Town Board.
- B. Procedures for construction of towers on nonmunicipal-owned property and/or the addition of antenna to an existing unapproved tower and/or structure.
 - (1) The applicant shall apply for building permit and special use tower permit through the Building Department.
 - (2) The applicant shall supply 20 copies of application and supporting documents to the Town Clerk at least 20 days prior to the Planning Board or Town Board meeting that the applicant wishes to be heard at. The applicant would pay all applicable fees 20 days prior to any scheduled date.
 - (3) The applicant shall appear at the Planning Board for full site plan and review, for a recommendation to the Town Board. Notice to surrounding property owners within 500 feet of the proposed tower is required and should be supplied by the applicant. The public hearing is to be held by the Planning Board.
 - (4) If the Planning Board finds that the existing structure was not built in compliance with the Town of Elma codes and with Town approvals then the structure must be reviewed prior to any permission being issued. Further, fees for review and approval of existing structure must be paid to comply with the Town Code prior to completion of any other review. It will be necessary for applicant to pay the applicable fees that the Town sets from time to time.
 - (5) If the height requirements are over the listed amount, then the Zoning Board of Appeals must review and give its approval on this proposed height. This shall be done after public notice and a public hearing is held.
 - (6) After review by the Planning Board and, if applicable, the Zoning Board of Appeals, each Board will forward their recommendations to the Town Board.
 - (7) The applicant would appear at the Town Board for review and disposition of the proposal, who, after a

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public hearing, will approve or disapprove the application.

- (8) The applicant shall provide, upon final approval, a demolition bond for removal after abandonment of the tower for a period of six months. The amount of the bond is to be reviewed by the Planning Board. The Planning Board is to receive from the applicant several estimates as to how much the proposed structure will cost to remove it. The Planning Board will recommend to the Town Board to obtain a bond not less than 1 1/2 times the current removal value. This demolition bond value is to be reviewed for adequacy every five years. If at the review, additional security is found to be needed then the applicant shall promptly obtain and forward to the Town Clerk's office for filing.

Chapter 59B

CROSS-CONNECTION CONTROL

§ 59A-9

[HISTORY: Adopted by the Town Board of the Town of Elma 10-24-2001. Amendments noted where applicable.]

§ 59A-9

GENERAL REFERENCES

Water — See Ch. 140.

§ 59B-1. Purpose; responsibility for installation.

A. The purpose of this chapter is:

- (1) To protect the public drinkable water supply of the Town of Elma from the possibility of contamination by isolating within its customers' internal distribution system(s) or its customers' private water system(s) such contaminations or pollutants which could backflow into the public water supply system; and
- (2) To comply with the requirements of the New York State Sanitary Code Subpart 5 and in particular 5-1.31 and other provisions of the New York State Department of Health (NYSDOH).

B. Responsibility. The Elma Water Department (EWD) shall be responsible for the protection of all Town of Elma water distribution systems from contamination due to the backflow of contaminants through the water service connection. If, in the judgment of said Water Department, an acceptable backflow prevention device is required at any Town water service connection to any customer's premises, for the safety of the water system, the Water Department or its designated agent shall give notice in writing to said customer to install such acceptable backflow prevention device at each service connection to their premises. The customer shall immediately install such approved device or devices at his own expense; and failure, refusal or inability on the part of the customer to install, have tested and maintained said device or devices shall immediately constitute a ground for discontinuing water service to the premises until such requirements have been met.

§ 59B-2. Definitions.**A.** As used in this chapter, the following terms shall have the meanings indicated:

ACCEPTABLE BACKFLOW PREVENTION DEVICE — An acceptable air gap, reduced pressure zone device or double check-valve assembly as used to contain potential contamination within a facility. In order for the reduced pressure zone device or the double check-valve assembly to be acceptable, it must be listed on the most current version of the New York State Department of Health List of Acceptable Devices (PWS-14).

APPROVED — Accepted by the Town of Elma Water Superintendent as meeting an applicable specification stated or cited in this chapter or as suitable for the proposed use.

AUXILIARY WATER SUPPLY — Any water supply on or available to the premises other than a Town of Elma approved public water supply. These auxiliary waters may include water from another purveyor's public potable water supply or any natural source(s) such as a well, spring, stream, rainwater, etc., or used waters or industrial fluids. These waters may be contaminated or they may be objectionable and constitute an unacceptable water source over which the water purveyor does not have sanitary control.

CROSS-CONNECTION — Any connection or potential connection, which allows or potentially allows for the intermingling of water from any auxiliary water supply or any substance from any other unauthorized source with water from a Town of Elma approved public water supply.

CUSTOMER'S WATER SYSTEM — The piping used to convey water supplied by a Town of Elma water supply system throughout a customer's facility. The system shall include all those parts of the piping beyond the control point of the Town Water Department. The control point is either the curb valve or the main valve located in the public right-of-way that isolates the customer's facilities from the Town or district distribution system.

HAZARDOUS FACILITY — One in which substances may be present which, if introduced into the public water system, would or may endanger or have an adverse effect on the health of other water customers. Typical examples are laboratories, sewage treatment plants, chemical plants, hospitals, mortuaries and commercial enterprises. This is also defined as any commercial or business enterprise as defined by zoning or by business use permit.

PUBLIC WATER SUPPLY SYSTEM — The Town of Elma water supply system, including the source, treatment works, transmission mains, distribution system and storage facilities serving the public. This includes the distribution system up to its connection with the customer's water system.

REDUCED PRESSURE ZONE (RPZ) DEVICE, ACCEPTABLE — A device containing a minimum of two independently acting check valves, together with an automatically operated pressure differential relief valve located between the two check valves. During normal flow and at the cessation of normal flow the pressure between these two checks shall be less than the upstream (supply) pressure. In case of leakage of either check valve, the differential relief valve, by discharging to the atmosphere, shall operate to maintain the pressure. The unit must include tightly closing shutoff valves located at each end of the device, and each device shall be fitted with properly located test cocks.

B. Other terms. All other terms are defined in the Department of Health and Town of Elma Cross-Control Manuals and policies as now in force or as amended from time to time.

§ 59B-3. Requirements.

- A. The customer's water system shall be open for inspection at all reasonable times to authorized representatives of the Town of Elma.
- B. The Town of Elma shall rate a customer's water system according to its degree of hazard to the public water supply system. Some of the factors to be considered are the use and availability of contaminants, the availability of an auxiliary water supply, and the type of fire-fighting system in use.
- C. An acceptable backflow prevention device shall be installed on each service line to a customer's water system at or near the property line or immediately inside the building being served but, in all cases, before the first branch line leading off the service line, as follows:
 - (1) Whenever a customer's water system is rated hazardous, an acceptable reduced pressure zone device or air gap shall be installed.
 - (2) Whenever a customer's water system is rated aesthetically objectionable, as a minimum, an acceptable double check-valve assembly shall be installed. Unless otherwise determined by the Water Superintendent, one- and two-family residential water systems shall be deemed to have a nonhazardous classification.
- E. The design of the installation of an acceptable backflow prevention device must be prepared in accordance with New York State laws and regulations. The design must be approved by the Superintendent and/or its agent and all agencies required by the applicable New York State and Town of Elma laws and regulations.
- F. It shall be the duty of the customer at any premises classified as hazardous pursuant to Subsection D(1) and (2) above where a reduced pressure zone device, and/or a double check-valve assembly is required, to have certified inspections and operational tests done on every containment device, at least once a year. In those instances where the Superintendent deems the hazard to be great enough, he may require certified inspections at more frequent intervals. Certified inspections and operational tests must also be made when any reduced pressure zone device is to be installed, repaired, overhauled or replaced, in addition to the requirement of an annual certified inspection and operational test. All inspections and tests shall be at the expense of the customer and shall be performed, by a New York State Department of Health (NYSDOH) certified tester approved by the Town of Elma Water Superintendent. The Town Water Department shall make available the names, addresses and telephone numbers of those persons who are certified as testers for such backflow prevention devices. It shall be the responsibility of the water customer per New York State Sanitary Code 5.1.31 a, b and c to see that such certified inspections and operational tests are made. The customer shall notify the Superintendent in advance, in writing, when the tests are to be undertaken so that he or his representative may witness the tests if the Superintendent so desires. These devices shall be repaired, overhauled or replaced at the expense of the customer whenever said devices are found to be defective. Records of such tests, repairs and overhauls shall be kept and made available to the Water Superintendent. Copies of all testing and maintenance records shall be sent to the Superintendent immediately after the work is performed. Protection of the public water supply and the customer's water system must be in full force at all times. Note: There is no grace period for noncompliance or repairs, etc., under any section of this chapter. Nothing contained in this chapter grants a license for noncompliance.
- G. No water service connection to any customer's water system shall be installed or maintained by the Town of Elma Water Department unless the water supply is protected as required by state laws and regulations and this chapter. Service of water to any premises shall be discontinued by the Town of Elma Water Department if a backflow prevention device required by this chapter is not installed, tested and maintained, or if it is found that a backflow prevention device has been removed or by passed or otherwise compromised. Service will not be restored until such conditions or defects are corrected.

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H. No customer shall allow any water or other substance from an auxiliary water supply or other source to enter any portion of the customer's internal distribution system which is connected, directly or indirectly, to any Town of Elma public water supply.

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§ 59B-4. Enforcement and penalties for offenses.

- A. No water service connection to any premises shall be installed or maintained by the water user, unless the water supply is protected as required by this chapter and such other local, state and federal laws, rules and regulations.
- B. If any facility served by a water system denies a Water Department person access to their premises for the purpose of determining if protection to the public water system is necessary, then the maximum protection condition shall be imposed with the requirement that the number of devices shall equal the number of service lines.
- C. The following penalties shall be applicable for a violation of this chapter:
 - (1) Failure to obtain approval for the appropriate backflow prevention device installation within 60 days after the first notice: fine of \$250.
 - (2) Failure to install the appropriate backflow prevention device installation within 30 days after the second notice: termination of service.
 - (3) Failure to at least annually test and certify that backflow device installation meets the criteria to comply as an acceptable containment device within 10 days of notice: \$300 and/or termination of service.
 - (4) Failure to correct, replace or repair a backflow prevention device or the installation as required: \$300 and/or termination of service.
 - (5) Any water service terminated under this chapter shall be subject to the fees of termination for nonpayment in effect at the time of violation.
 - (6) Any penalties under this section shall be treated as though it is for water services and may be placed on the tax roll as a lien if unpaid.

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§ 59B-5. Fee schedule.

A. Fees for plan review by the Elma Water Department Engineer:

Pipe Size (inches)	Fee
3/4 to 1 1/2	\$100
Over 1 1/2	\$200

B. Fees for inspections for each device shall be required at a cost of \$75. All other inspections for determination for the need for RPZ shall be at a cost of \$75.

C. Additional reviews and inspections. Additional reviews and inspections may be charged to the water customer at 1/2 the review or inspection fee for each additional review or inspection as deemed appropriate by the Elma Water Department.

D. Every day that the customer is in violation of this chapter represents a separate daily fine.

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§ 59B-6. Installation and maintenance.

- A. Water meters and/or containment devices, their vaults, protective enclosures, appurtenances and other structures, to include those installations and plumbing inside of buildings. It shall be the sole responsibility of the water customer to install and maintain said items at an acceptable level of condition as determined by the Elma Water Department, and they shall be in continuous conformity with governing laws, ordinances, regulations and specifications of the Elma Water Department and the State of New York as now in force or amended.
- B. It shall be the policy of the Elma Water Department to follow the general regulations and standards regarding water distribution systems, and especially those covering cross-connection control as adopted by the Erie County Water Authority and the State of New York, notwithstanding the right of the Elma Water Department to amend and/or modify those regulations and standards to be more detailed or restrictive at its sole election.

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§ 59B-7. Required testing and certification.

The test reports (Form DOH 1013) for each device shall be submitted to the Health Department and also to the Elma Water Department at least annually or more frequently at the discretion of the water supplier. Unacceptable completion of the test report forms submitted by a tester may result in the Superintendent barring future testing by that particular certified tester in the Town of Elma at the sole discretion of the Water Superintendent.

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§ 59B-8. New systems.

All containment device installation design plans must be approved by both the Health Department and the Town of Elma and the New York State Department of Health. The Engineer's report must be accompanied by the Elma Water Department design approval criteria as amended from time to time.

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§ 59B-9. Entrance to premises.

For the purposes of inspection, installation, maintenance, repair, turning on or shutting off water, authorized personnel of the Water Department shall have free and full access, at all reasonable times, to all parts of any premises supplied with water from the Elma Water District or upon which application has been made to the Water Department or to which water is reasonably believed to be supplied. Filing of an application shall, in addition to the provisions of this chapter, be deemed consent to such access.

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§ 59B-10. Experts.

The Town of Elma Water Department may engage the services of an expert to manage the cross-connection control program and transfer this cost to the customer for the review of said property.

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§ 59B-11. Plumbing.

All internal plumbing must conform to and be maintained in continued conformity with the New York State Uniform Fire Prevention and Building Codes and the New York State Sanitary Code or any amendments made from time to time as well as any local codes, and may be inspected by the EWD to qualify its conformity.

Chapter 60

DEALERS IN MOTOR VEHICLES

§ 59B-11

§ 59B-11

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

GENERAL REFERENCES

Collision shops — See Ch. 59.

Zoning — See Ch. 144.

ARTICLE I
Dealers in Vehicles, Boats and Trailers
[Adopted 11-5-1986 by L.L. No. 12-1986]

§ 60-1. Applicability.

This article shall apply to all dealers in the sale, purchase and rental of new and used motor vehicles, including but not limited to automobiles, commercial vehicles, recreation vehicles and boats and trailers therefor, located within the Town of Elma and shall apply to and regulate all such dealers and locations where the foregoing vehicles, boats and trailers are sold, offered for sale or rental, rented or stored or displayed for sale or rental.

§ 60-2. Dealers.

All dealers to whom this article applies shall comply with the following restrictions and requirements in the conduct of their business:

- A. No repair or collision work shall be performed, unless a specific use permit for repairs and/or collision work has been applied for and issued by the Town Board.
- B. Hours of operation shall be from 8:00 a.m. until 10:00 p.m., unless a special permit for other hours shall be granted by the Town Board for exceptional or unusual promotions or circumstances.
- C. No vehicles, boats or trailers shall be displayed within 20 feet from the surfaced portion of any road nor within 10 feet from side lot lines. Display shall be in such a manner that visibility of highways, intersections and driveways shall not be obscured.
- D. Any vehicle which is damaged to the point of being inoperable and replacement parts for damaged items shall be stored inside a building or shielded by a fence or other adequate screening sufficient to be concealed from public view.
- E. Open display lots or areas shall not be used after sunset, unless illuminated by electric lighting installed and arranged in such a manner as to deflect the lighting away from any public highway and adjoining residences. Unshaded strings of lights or bulbs are prohibited.

§ 60-3. Lots.

All lots maintained by dealers to whom this article applies shall comply with the following requirements and restrictions:

- A. Dealers shall apply for a special use permit for the operation of a facility and shall not operate as a dealer without such permit from the Town Board.
- B. Application for such permit shall be made in writing and shall be referred to the Planning Board for review and recommendation under the site plan provisions of the Code of the Town of Elma.
- C. No permit shall be issued or approved until recommendation is received from the Planning Board.
- D. All driveway and areas for display must be surfaced with paving material.
- E. Each lot must have an adequate drainage system to drain surface waters in such a manner that no pools of water will form on said lot nor flow from said lot to the streets or to adjoining lands.
- F. Each lot must have adequate off-street parking which will create no traffic hazard problem to adjoining streets or property.

§ 60-4. Compliance required; violations; revocation of permit.

§ 60-4

§ 60-4

- A. Existing dealers in items to which this article applies must conform to the provisions hereof within three years from the enactment hereof. Failure to conform shall be a violation hereof.
- B. Failure to comply with the requirements hereof shall be a violation hereof.
- C. The Town Board may revoke the permit issued to any dealer for persistent or willful violations of the provisions hereof.

ARTICLE II
Sale and/or Service of New and Used Cars
[Adopted 3-4-1998³¹]

§ 60-5. Purpose; title.

Due to proliferation of new and used car sales and/or service requirements or applications in the Town of Elma; with a desire to control the zones and areas in which such facilities may be located; in order to maintain the character of the neighborhoods in the Town of Elma and the character of the Town itself; and to promote the health and safety of the citizens of the Town of Elma, the following article, which shall be known as the "Used Automobile Sales and/or Services Ordinance," is hereby enacted.

§ 60-6. Definitions.

As used in this article, the following terms shall have the meanings indicated:

AREAS DESIGNATED FOR NEW OR USED CAR LOTS —

A. SPECIAL-COMMERCIAL ZONES —

- (1) AREA 1 — MAPLE ROAD — From a point in the center line of West Blood Road, north along the center line of Maple Road 338.55 feet to a point. From this point, north 1,356.53 feet as measured on easterly lot fronts along center line of Maple Road to a point.
- (2) AREA 2 — SENECA STREET — Beginning at a point 664.3 feet north-northwest of the center line of Rice Road, in the center line of Seneca Street. From this point proceeding southeasterly to a point intersecting the southernmost line of Lot 5.111 (Tax Map identifier 155.00-1-5.111), in the center line of Seneca Street; this point being 960 feet plus or minus to the southeast of the intersection of old Seneca Street.
- (3) AREA 3 — Beginning at a point 350 feet south of the center line of Kingsley Road, using Tax Map of 1997; at this point in the center line of Transit Road, proceeding north 958.66 feet to a point.
- (4) AREA 4 — Along Transit Road, beginning at a point 500 feet south of the center line of Seneca Street, then proceeding north to a point 450.8 feet north of the center line of Seneca Street. Then at the north end of the New York State right-of-way at Bullis Road, in the center line of Transit Road, proceed north passing intersecting roads to a point 1,298 feet north of the center line of Clinton Street, to a point which is the Elma/Lancaster Town line.

NEW OR USED CAR LOT — Any lot located within the Town of Elma which is used solely or partly for the sale and/or servicing for purposes of selling or preparing new or used automobiles for sale or any other automobiles requiring registration.

TOWN — The Town of Elma.

§ 60-7. Permitted areas.

No new or used car lot shall be located in any zoning area but special-commercial, which zone shall be as approved by the Town Board in accordance with applicable local, county and New York State laws.

§ 60-8. Requirements.

All new or used car lots shall comply with the regular commercial zoning regulations as well as the following:

31. Editor's Note: This ordinance also provided that it shall take effect 3-4-1998.
 1:379

§ 60-8

- A. The minimum area for each vehicle shall be 200 square feet per vehicle, which area does not include driveways or fire entry to buildings.
- B. The Town of Elma has a preference for the vehicles to be sold to be placed on concrete or blacktop. The Planning Board, for good cause shown, may recommend to the Town Board for approval of other surfaces. If other surfaces are utilized, proper care shall be demonstrated for proper maintenance to ensure that debris is not deposited or dragged upon public thoroughfares.
- C. Parking areas shall be as follows:
 - (1) One space for each eight vehicles for sale for customer parking.
 - (2) One space for each 15 vehicles for sale for employees.
- D. Preparation areas in the building and/or on the site shall include at least one bay with proper floor drains for washing and preparing vehicles with Erie County Health Department approvals and shall comply with the New York Codes, Rules and Regulations (NYCRR) regulations on occupancy in change of use of property or building.

§ 60-9. Application; fee; review; determination.

- A. All applications for a used car lot shall be made initially to the Building Inspector with the appropriate fee.
- B. The Building Inspector shall immediately refer the matter to the Town Board at its next regularly scheduled meeting for review and referral to the Planning Board.
- C. The Planning Board shall conduct an adequate site review, including designation of any building permit requirements necessary in addition to those normally required. The Planning Board shall make such recommendations to the Town Board for final approval, including any recommendations that sufficient mitigating circumstances exist that said new or used car lot may be located outside the special commercial zone hereinbefore designated.
- D. The Town Board shall review and determine final approval and place any and all conditions thereon. The Town Board reserves the right to approve such waiver but only when such mitigating circumstances have been shown as to substantially override the intent of this article as stated in § 60-5.

Chapter 65

DOGS

§ 60-9

[HISTORY: Adopted by the Town Board of the Town of Elma 8-7-1974 by Ord. No. 14; amended in its entirety 11-17-2010 by L.L. No. 3-2010. Subsequent amendments noted where applicable.]

§ 60-9

ARTICLE I
Dog Licensing

§ 65-1. Title.

This article shall be known as the "Town of Elma Dog Licensing Law."

§ 65-2. Licensing of dogs.

- A. All dogs in the Town of Elma must be licensed with the Town Clerk by the age of six months and are required to present a current certificate of rabies at the time of licensing or the renewal of an existing license.
- B. All dog licenses will be paid for a period of one year and will expire at the end of the month one year from the date of issue. Dog licenses are not transferable and nonrefundable.
- C. Fees for licensing of dogs. The fee for a spayed or neutered dog for one year will be \$6 (which fee includes the assessment of a one-dollar surcharge for the purpose of carrying out animal population control). The fee for an unspayed or unneutered dog will be \$14 (which included the assessment of a three-dollar surcharge for the purpose of carrying out population control). These fees established by this provision are subject to review by the Town Board periodically and may be changed by a resolution of the Town Board, if deemed necessary.
- D. Grace period. Any dog harbored within the Town of Elma which is owned by a resident of New York City and licensed by the City of New York, or which is owned by a nonresident of New York State and licensed by a jurisdiction outside the State of New York, shall for a period of 30 days be exempt from the provisions of this section.
- E. Enumeration fee. When the Town Board has determined the need for dog enumeration, a fee of \$25 will be assessed to all dogs found unlicensed within the Town of Elma.
- F. Purebred license. The Town of Elma will be issuing purebred licenses. A purebred license licensing up to 10 purebred dogs may be purchased for a thirty-dollar flat fee per year, plus a three-dollar surcharge for each unspayed and unneutered dog and a one-dollar surcharge for each spayed and neutered dog. A purebred license may only be issued if all dogs on premises have papers certifying them as purebreds. Holders of a purebred license may have different kinds of purebred dogs on the premises; non-purebred dogs are not permitted with a purebred license.
- G. Service dogs. The Town of Elma will require a license for every guide dog, service dog, hearing dog, therapy dog and detection dog; however, the fee for this license shall be waived. A current certificate of rabies shall be required at the time of licensing or the renewal of an existing license.
- H. The Town of Elma does not allow the licensing of dogs by a shelter. The shelter must send the adoptive dog owners to the Town Clerk of the town or city in which the dog will be harbored for licensing or to the Town Clerk of the Town of Elma where the shelter is located for the purchase of the license for adoption purposes.
- I. All dog licenses may be purchased by visiting the Town Clerk's office, by regular mail or the night drop box on the front of the Town Hall. If licensing or renewing a license by mail, the appropriate fee must accompany the forms. There will be no refund of fees for a one-year license.
- J. All fees will be issued in funding the administration of this chapter.
- K. This annual dog license fee shall be charged for all licenses becoming effective January 1, 2011.

ARTICLE II Control

§ 65-3. Title.

This article shall be known as the "Town of Elma Dog Control Law."

§ 65-4. Definitions.

As used in this article, the following terms shall have the meanings indicated:

AT LARGE — Any dog that is on property open to public or is on private property not owned or leased by the owner of the dog unless permission for such presence has been obtained. No dog shall be deemed to be at large if it is a guide dog actually leading a blind person, a police work dog in use for police work, or a dog accompanied by its owner or other responsible person and is actively engaged in hunting or training for hunting on unposted land or posted land with permission of the owner of the land or leashed as prescribed by § 65-5A.

HARBORER — The person who provides sustenance and shelter for any dog whether or not such person shall be the owner.

OWNER — The person who is recorded in the Town Clerk's office as the applicant for the license for a dog, if such animal shall be licensed, or the person who provides sustenance and shelter for such animal.

§ 65-5. Restrictions.

- A. No owner or harborer owning, keeping, harboring or having the care, custody or control of any dog or dogs shall allow or permit any such dog or dogs to be off the premises of such person, firm or corporation (at large) and in the Town of Elma unless restrained by a chain or leash not exceeding six feet in length. Whenever any dog is found off the premises of the person, firm or corporation owning, keeping, harboring or having the care, custody or control of such a dog not controlled or restrained as above provided, it shall be presumed that such person, firm or corporation permitted or allowed such dog or dogs to be off the premises in violation of this section.
- B. No owner or harborer shall keep or allow to be kept on premises owned or controlled by him or any dog which, by its incessant barking, howling, wining or other noise, shall unreasonably disturb the peace and quiet of any person.
- C. No person shall deliberately, carelessly or negligently provoke a dog into barking, thereby disturbing the peace and quiet of a neighborhood by annoying the residents thereof.
- D. No owner or harborer shall own, keep, harbor or have the care, custody or control of any dog not licensed as required by this Chapter 65.
- E. No owner or harborer of a dog shall permit or allow such dog to cause damage or destruction to property or to urinate or defecate or to commit any other nuisance upon the premises of a person other than his own.
- F. No owner or harborer of a dog shall allow such a dog to habitually chase motor vehicles or bicycles or other conveyance, including pedestrians and joggers.
- G. No owner or harborer shall fail to have such a dog receive the mandatory rabies vaccinations as required pursuant to the provisions of Article 21, Title IV, of the Public Health Law.

§ 65-6. Interference with enforcement officials.

No person shall hinder, resist or oppose any properly designated official or representative of the Town in the performance of his duties under this article.

§ 65-7

§ 65-10

§ 65-7. Duties of Dog Control Officer; impoundment.

- A. It shall be the duty of the Dog Control Officer or any other Town agent or employee designated by the Town Board hereafter to seize or take control of any dog found running at large or unrestrained contrary to the provisions of § 65-5, any dog found to be unlicensed, any dog which is not in the control of the dog's owner or harbinger, or not on the property of the dog's owner or harbinger if there is probable cause to believe that the dog is dangerous and any dog that, in the opinion of the Dog Control Officer, police officer or peace officer, poses an immediate threat to the public safety and to impound said dog in a suitable place.
- B. In the use of any weapon or device for dog control, including but not limited to netting, trapping, snaring, tranquilization or firearm use (by a licensed official), the Dog Control Officer shall employ the most humane method possible under the circumstances.
- C. The Dog Control Officer, seizing and impounding any dog, shall make a complete registry, entering therein the breed, color, sex and any distinguishing marks of such dog and whether licensed. If licensed, he shall enter the license number and the name and address of the owner.

§ 65-8. Effect of ownership by minor.

In the event that the owner shall be a minor under the age of 16 years, then the head of the household in which such minor resided shall be deemed to have the care, custody and control of said dog and shall be responsible for any acts in violation of this article.

§ 65-9. Enforcement; right of entry.

- A. This article shall be enforced by the Dog Control Officer and any other Town agent or employee designated by the Town Board thereafter. The Dog Control Officer shall have all the powers of a peace officer in enforcing the provisions of this article and the provisions of the Agriculture and Markets Law.
- B. The Dog Control Officer and any other Town agent or employee designated by the Town Board hereafter are authorized to sign and issue any complaint, information, affidavit or notice in connection with the prosecution of any violation of this article.
- C. The Dog Control Officer and any other Town agent or employee designated by the Town Board hereafter are authorized to enter upon any lands upon which a dog is kept or harbored and to require the display by the person owning or having charge or control of such dog of the license tag for such dog. If a license tag for such dog is not displayed to the Dog Control Officer, the Dog Control Officer shall have the right to seize such dog at a suitable place.
- D. If an issued summons is disregarded by the person receiving it, the Town Justice may permit the filing of information and issue a warrant for the arrest of such person.

§ 65-10. Penalties for offenses.

- A. Any person, firm or corporation violating any provision of § 65-5 of this article shall be guilty of a violation and shall be subject to penalties as set forth hereafter.
- B. Any person, firm or corporation taking part in or assisting in any violation of § 65-5 of this article shall be also subject to penalties herein.
- C. Each day that a violation of this article is committed or is permitted to exist shall constitute a separate offense.
- D. Penalties shall be as follows:
 - (1) For the first violation by any person, owner or harbinger within a three-year period, such person owner or harbinger shall be subject to a fine of not less than \$35 and not more than \$100.

- § 65-10
- § 65-11
- (2) For a second violation by any person, owner or harborer within a three-year period, such owner or harborer shall be subject to a fine of not less than \$60 and not more than \$150.
- (3) For a third violation by any person, owner or harborer within a three-year period, such person, owner or harborer shall be subject to a fine of not less than \$100 and not more than \$200 and/or imprisonment for a period not exceeding 15 days.
- (4) Any person taking part or assisting any violation of this article shall also be subject to penalties herein.
- E. If a dog seized under the provisions of § 65-5 is not redeemed within the redemption time periods provided by the New York State Agriculture and Markets Law, the owner shall forfeit all the title to such dog, and the dog shall be sent to the SPCA, given for adoption, or destroyed by the peace officer or representative of the Commissioner of Agriculture and Markets, and pay any established fines. Anyone that picks up an at-large dog in the Town of Elma must notify the Dog Control Officer of Elma (or assistant) and surrender the dog upon request, before removing the dog from the Town, subject to fine. Adoption fees, which are set in the Fee Schedule of the Town of Elma, include veterinarian bills, license fees, and maintenance fees of the dog. There shall be a fee for the euthanasia and disposal of a dog, which shall be in an amount equal to the cost incurred by the Dog Control Officer in providing this service.
- F. Redemption fees of seized dogs. The owner of a seized dog may redeem the dog(s) within seven days of seizure, if untagged or tagged, by paying to the Town Clerk's office the following seizure and poundage fees: **[Added 6-18-2014 by L.L. No. 2-2014]**
- (1) Twenty-five dollars on first seizure for each dog seized.
- (2) Forty dollars on a second seizure within a one-year period per dog seized.
- (3) Fifty-five dollars on a third seizure or more within a one-year period.
- (4) Plus \$7 per day for expenses after the first offense.

§ 65-11. Liability of Town officials.

No officer, agent or employee of the Town of Elma shall render himself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties under this article. Any suit brought against any officer, agent or employee of the Town of Elma as the result of any act required or permitted in the discharge of his duties under this article shall be defended by the Town Attorney until the final determination of the proceedings thereon.

Chapter 68

DUMPS AND DUMPING

§ 65-11

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

§ 65-11

GENERAL REFERENCES

Solid waste — See Ch. 119.

Zoning — See Ch. 144.

ARTICLE I
Town Dumps
[Adopted 12-6-1961 by Ord. No. 7]

§ 68-1. Applicability.

This article shall apply to any dump for the disposal of garbage, trash or refuse owned, operated or maintained by the Town of Elma.

§ 68-2. Use of Town dumps. [Amended 6-3-1981]

- A. No person shall dump rubbish or debris on any lands located in the Town of Elma, except upon a duly established Town dump.
- B. No person shall use the Town dump, except residents of the Town of Elma who have procured a permit for that purpose. Such permits may be procured without charge from the Town Clerk during business hours.
- C. The dumping of garbage and trash in the Town dumps by commercial collectors is prohibited.

§ 68-3. Hours for dumping; posting.

Dumping shall be permitted only on Tuesdays, Wednesdays, Fridays and Saturdays for not more than a total of 40 hours on said days and in accordance with the lease held by the Town. The daily hours of use on said days shall be from time to time fixed and determined by the Town Board and shall be prominently posted at the entrance to the dumping premises and, in addition, shall, upon their enactment, be publicly advertised.

§ 68-4. Dumping of certain materials prohibited.

No materials shall be allowed to be disposed of in any Town dump, except the ordinary and usual trash, garbage and refuse resulting from residential and commercial use of premises. Industrial wastes shall not be allowed, except by permit of the Town Board after a hearing.

§ 68-5. Custodian.

The Town shall, at all times the Town dump is open, employ a custodian who shall supervise and direct the area and manner of dumping and disposal. All authorized persons using said dump shall obey and comply with the reasonable requests and directions of said custodian with respect to the area and manner of dumping.

§ 68-6. Salvage rights.

The Town of Elma shall retain for itself any rights of salvage from said Town dump, except that the Town Board may, in the manner prescribed by law, contract for the disposal of such rights.

§ 68-7. Penalties for offenses. [Amended 6-3-1981]

- A. Any person, firm or corporation violating any of the provisions of this article shall be guilty of an offense and, for such violation, shall be subject to a fine not exceeding \$250 or to imprisonment for a term not exceeding 15 days, or both, for each such violation.
- B. Any person, firm or corporation refusing to obey the reasonable requests and directions of the custodian of the Town dump shall be guilty of an offense and, for such violation, shall be subject to a fine not exceeding \$250 or to imprisonment for a term not exceeding 15 days, or both, for each such violation. For persistent violators, the Town Board may, in its discretion, revoke any permit issued to such violator and deny to such violator the use of the Town dump.

ARTICLE II
Creek Road Solid Waste Facility
[Adopted 6-17-1981]

§ 68-8. Commercial dumping prohibited.

Combustible materials, including but not limited to demolition products, tree trimmings and building materials, shall be received at the Creek Road Solid Waste Facility only as follows:

- A. Products of commercial activity, including demolition, new construction or alterations, shall not be permitted to be deposited at the facility.
- B. Truckloads of such material shall not be permitted to be deposited at the facility.
- C. Only materials resulting from normal residential use and activities shall be received.

§ 68-9. Penalties for offenses.

Any person, firm or corporation who shall violate any of the provisions of this article shall, upon conviction, be punishable by a fine of not more than \$250 or by imprisonment for not more than 15 days, or both.

Chapter 70

EASEMENTS, CONSERVATION

§ 68-9

[HISTORY: Adopted by the Town Board of the Town of Elma 9-21-2005. Amendments noted where applicable.]

§ 68-9

GENERAL REFERENCES

Conservation Board — See Ch. 7.

Subdivision of land — See Ch. 123.

Site plan review — See Ch. 117.

§ 70-1. Title.

This chapter shall hereinafter be known and cited as the "Conservation Easement Law of the Town of Elma."

§ 70-1

§ 70-2

§ 70-2. Purpose.

It is the purpose of this chapter to provide for the acquisition of interest or rights in real property for the preservation of open space and areas which shall constitute a public purpose for which public funds may be expended or advanced after due notice and a public hearing, by which the Town of Elma may acquire by purchase, gift, grant, bequest, devise, lease or otherwise the fee or any lesser interest, development right, easement, covenant or other contractual right necessary to acquire "open space" or "open area" as the same is defined in § 70-5 herein.

§ 70-2

§ 70-3

§ 70-3. Legislative authority.

In accordance with § 247 of the General Municipal Law of the State of New York, the Town Board of the Town of Elma has the authority to acquire such interests or rights in land. Pursuant to the above authority, the Town Board has prepared and adopted this chapter setting forth standards to be followed in the acquisition of such interest.

§ 70-3

§ 70-4

§ 70-4. Jurisdiction.

This chapter shall apply to the entire area of the Town of Elma.

§ 70-5. Definitions.

For the purpose of this chapter, the terms used herein are defined as follows:

OPEN SPACE or OPEN AREA — Any space or area characterized by natural scenic beauty or whose existing openness, natural condition or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development or would maintain or enhance the conservation of natural or scenic resources. For the purposes of this definition, "natural resources" shall include but not be limited to agricultural lands defined as open lands actually used in bona fide agricultural production.

§ 70-6. Procedure for granting easement.

- A. Proposal by owner. Any owner or owners of land may submit a proposal to the Town Board of the Town of Elma for the granting of interest or rights in real property for the preservation of open space or areas. Such proposal shall be submitted in such manner and form as may be prescribed by the Conservation Board and shall include a survey map and metes and bounds description of the proposed area.
- B. Review by Conservation Board. Upon receipt of such proposal, the Town Board shall convey the proposal to the Conservation Board. The Conservation Board shall investigate the area to determine if the proposal would be of benefit to the people of the Town of Elma and may negotiate the terms and conditions of the offer. If the Conservation Board determines that it is in the public interest to accept such proposal, it shall recommend to the Town Board that it hold a public hearing for the purpose of determining whether or not the Town should accept such proposal.
- C. Public hearing by Town Board. The Town Board shall, within 30 days of receipt of such advisory opinion, hold a public hearing concerning such proposal at a place within the Town of Elma. At least 10 days' notice of the time and place of such hearing shall be published in a paper of general circulation in such Town, and a written notice of such proposal shall be given to all adjacent property owners and to any municipality whose boundaries are within 500 feet of the boundaries of said proposed area, to the school district in which it is located.
- D. Determination. The Town Board, after receiving the reports of the Conservation Board and after such public hearing, may adopt the proposal or any modification thereof it deems appropriate or may reject it in its entirety.
- E. Recording agreement. If such proposal is adopted by the Town Board, it shall be executed by the owner or owners in written form and in a form suitable for recording in the County Clerk's office.
- F. Cancellation. Said agreement may not be canceled by either party. However, the owner or owners thereof may petition the Town Board for cancellation upon good cause shown, and such cancellation may be granted only upon payment of the penalties provided in § 70-8 herein.

§ 70-7. Valuation for taxation.

After acquisition of any such interest pursuant to this chapter, the valuation placed upon such area for purposes of real estate taxation shall take into account and be limited by the limitation of the fixture use of the land. The limitation will be calculated by the Assessor first determining the going market value of farmland in the immediate area, which may include farmland in the Towns of Aurora, Marilla and Lancaster. Secondly, the vacant land within the conservation easement of the parcel will have the assessment reduced by the following percentages, thus compensating for the loss in value due to the conservation easement being placed upon the vacant land within the conservation easement of the parcel:

Commitment	Percentage of Reduction
15 to 29 years	50%
30 to 49 years	75%
50 to 75 years	85%
Perpetual	90%

§ 70-8. Penalties for offenses.

If there is a violation of the terms and conditions of the conservation easement agreement or if said conservation easement agreement is canceled by the Town Board upon petition, then the owner or owners of said property must pay to the Town of Elma the following amounts:

- A. All taxes abated pursuant to the conservation easement agreement, as limited by the remainder of this subsection, including those taxes imposed by the state, county, Town, school districts and all special improvement districts and other taxing units to which the property is subject. Repayment of the aforementioned abated taxes shall be based upon the following calculations:
 - (1) Easement agreements violated or canceled before the 15th year will be subject to repayment of the amount of the abated taxes for the past year, multiplied by five.
 - (2) Easement agreements violated or canceled between the 15th and 20th years will be subject to repayment of the amount of the abated taxes for the past year, multiplied by four.
 - (3) Easement agreements violated or canceled in their 20th year or later will be subject to repayment of the amount of the abated taxes for the past year, multiplied by three.
- B. A penalty which is based upon the amount of the previous year's tax abatement, multiplied by a factor (not to exceed 25) equal to the duration of the easement agreement, plus 6%.

§ 70-8

§ 70-9

§ 70-9. Prior easements.

All conservation easements filed in the Erie County Clerk's office prior to adoption of this amendment to § 70-8 of the Elma Town Code shall be governed by the provisions of § 70-8 of the Elma Town Code which were in effect prior to the adoption of this amendment.

Chapter 71

ELECTRICAL STANDARDS

§ 70-9

§ 70-9

[HISTORY: Adopted by the Town Board of the Town of Elma 7-16-1969 by Ord. No. 10. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 52.

Fire prevention — See Ch. 79.

Unsafe buildings — See Ch. 56.

§ 71-1. Inspectors designated. [Amended 8-16-2006]

The Chief Inspector and each of the duly appointed Inspectors of the New York Board of Fire Inspectors of Fire Underwriters and Commonwealth Electrical Inspection Service, Inc., are hereby authorized and deputized as agents of the Town of Elma to make inspections and reinspections of all electrical installations heretofore and hereafter described and to approve or disapprove the same. In no event, however, will the cost or expense of such inspections and reinspections be a charge against the Town of Elma.

§ 71-2. Duties of Inspector; enforcement officer designated.

- A. It shall be the duty of the Inspector to report, in writing, to the Building Inspector, whose duty it shall be to enforce all provisions of this code, all violations or deviations from or omissions of the electrical provisions of the Building Code applicable to the Town of Elma and of all local laws, ordinances and Building Code as referred to in this chapter insofar as any of the same apply to electrical wiring.
- B. The Inspector shall make inspections and reinspections of electrical installations in and on properties in the Town of Elma upon the written request of an authorized official of the Town of Elma or as herein provided. The Inspector is authorized to make inspections and reinspections of electrical wiring, installations, devices, appliances and equipment in or on properties within the Town of Elma where he deems it necessary for the protection of life and property. In the event of an emergency, it is the duty of the Inspector to make electrical inspections upon the oral request of an official or officer of the Town of Elma.
- C. It shall be the duty of the Inspector to furnish written reports to the proper officials of the Town of Elma and owners and/or lessees of property where defective electrical installations and equipment are found upon inspection.
- D. He shall authorize the issuing of a certificate of compliance when electrical installations and equipment are in conformity with this chapter. He shall direct that a copy of the certificate of compliance be sent to the Town of Elma to the attention of the Building Inspector.

§ 71-3. Application and certification required for electrical work. [Amended 8-16-2006]

It shall be a violation of this chapter for any person, firm or corporation to install or cause to be installed or to alter electrical wiring for light, heat or power in or on properties of the Town of Elma until an application for inspection has been filed with the New York Board of Fire Underwriters or Commonwealth Electrical Inspection Service, Inc. It shall be a violation of this chapter for a person, firm or corporation to connect or cause to be connected electrical wiring in or on properties for light, heat or power, to any source of electrical energy supply, prior to the issuance of a temporary certificate or a certificate of compliance by the New York Board of Fire Underwriters or Commonwealth Electrical Inspection Service, Inc.

Chapter 73

ENTERTAINMENT, PUBLIC

§ 71-3

§ 73-1

[HISTORY: Adopted by the Town Board of the Town of Elma 11-21-2001. Amendments noted where applicable.]

§ 73-1. License required for live music.

Restaurants or taverns that wish to play or perform live music must first obtain a license from the Town.

§ 73-1

§ 73-2

§ 73-2. Application for license; determination by Town Board.

Application for such license shall be made to the Town Board. The Town Board will refer the application to the Building Inspector for his investigation and recommendations. The Town Board will then issue a determination to approve or deny the application based upon the Building Inspector's recommendation, as well as any other information that the Town has concerning the history of the establishment and his investigation of the applicant's other licenses, if any.

§ 73-2

§ 73-3

§ 73-3. Suspension, revocation, renewal or refusal of license.

Any license granted under this chapter may be suspended, revoked, renewed or refused by the Town Board upon determination after notice and hearing before the Town Board.

§ 73-3

§ 73-4

§ 73-4. Fee; term of license; renewal.

The fee for each license shall be reviewed and set from time to time as deemed necessary by the Town Board. Each license shall expire on the 31st day of May next succeeding the date of issuance and must be renewed annually to continue to operate.

Chapter 75
EXCAVATIONS

§ 73-4

§ 73-4

[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 52.

Flood damage prevention — See Ch. 82.

Filling and grading — See Ch. 77.

Stormwater management — See Ch. 120.

ARTICLE I
General Regulations
[Adopted 6-27-1956 by Ord. No. 4]

§ 75-1. Declaration of policy.

It is hereby declared to be the policy of the Town Board to provide for the proper use of land to prevent all manner of excavations which create pits, holes or hollows in the earth, leaving it in a hazardous or dangerous state, or which cause soil erosion which depletes the land of its natural vegetative cover and supply of organic material, renders such land unproductive and unsuitable for agricultural purposes and undesirable for building homes, resulting in lower land values. By this article the Town Board seeks to remove the danger to health and life caused by deep excavations remaining in the ground and the stripping of topsoil, thereby resulting in damage to agricultural crops through dust storms in dry weather, by exposure of the bare earth to wind action and in wet periods by pools of water, which Article will promote the safety, health and general welfare of the people of the Town.

§ 75-2. Compliance with standards required; exceptions.

No excavation for purposes other than the construction of a wall, driveway, sidewalk, building or part thereof, or as permitted by § 75-8 of this article, shall be commenced except in conformity with the provisions of this article.

§ 75-3. Permit required; application.

- A. Before any excavation for purposes other than the construction of a wall, driveway, sidewalk, building or part thereof, farming or a public use is commenced and topsoil, earth, sand, gravel, rock or other substance is removed from the ground, the owner, lessee or agent of the premises shall obtain a written permit therefor from the Town Board, except that where operations are being carried on at the time this article becomes effective, a period of 30 days shall be allowed for obtaining a permit while operations continue. However, all such excavations shall be subject to all provisions of this article from the date of its adoption.
- B. For that purpose, each applicant shall file with the Town Clerk of the Town of Elma, New York, a verified application for such permit, containing a detailed statement of the proposed work, together with a plan. If such excavation is below road level or the contour of adjoining property, this plan must be made by a duly licensed engineer or surveyor. The following information shall be required:
- (1) All information as required on the application form prepared by the Town Board, including a detailed statement of the proposed work and a three-dimensional sketch of the proposed excavation and exact condition of the plot or premises before work is commenced and proposed condition of said plot or premises after the work is completed.
 - (2) The plan shall be drawn to a scale of not less than one inch equaling 100 feet and give all streets adjoining the property, the location and dimensions of the premises upon which it is proposed to excavate, the location, size and use of any buildings, cross-section of the property, giving elevations thereof at intervals of one-hundred-foot squares and also at each break in the grades, and the elevation of the premises as compared to the elevation of any abutting highways.
 - (3) For areas where only topsoil is to be removed, the plan shall show the provisions that have been made for draining or otherwise preventing the collection of water on any portion of said plot which is not restored to original grade.
 - (4) A duly acknowledged consent, in writing, of the owner or lessee of the premises and mortgagee, if any, including his or their addresses.
 - (5) Receipted tax bills or a certificate from the Receiver of Taxes of the Town of Elma and the County Treasurer of Erie County showing payment of all taxes and assessments to date against the property

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described in the application.

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- (6) A certificate of the Superintendent of Highways of the Town of Elma that such proposed excavation and the finished grades of said property as shown on said map will not interfere with the drainage or endanger any road, street or highway of the State of New York, the County of Erie or the Town of Elma or other property of said state, county or Town.

§ 75-4. Sand bank and gravel pits and pit excavations.

Requirements for sand bank and gravel pits and pit excavations shall be as follows:

- A. No such excavations shall be made:
 - (1) Within 20 feet of any property line; however, the Town Board may, within its discretion, allow excavations closer than 20 feet of any property line, provided that the applicant submits to the Town Board a duly acknowledged consent, in writing, of the owner, lessee and mortgagee, if any, of the adjoining property affected, consenting to such excavation and shall state the distance agreed upon between the parties.
 - (2) Within 100 feet of the edge of any highway right-of-way line.
- B. Said excavations shall be leveled on the bottom by refilling, if necessary, or grading, all sides being left with a slope from top to bottom of not more than 20%; except that where the material being removed is rock, in lieu of sloping all sides of the excavation as hereinbefore provided, a permanent fence or barricade designed to effectively prohibit access to the excavation must be erected on all sides bordering streets, highways and neighboring properties, and at the conclusion of operations, a permanent fence or barricade must be erected and maintained on all sides of such excavation, except that where the pit or excavation is below the water level, this excavation must be drained.
- C. During operations at any such excavation, the licensee shall comply with any direction by the Town Superintendent of Highways for control of dust at said operation. Failure to comply shall be grounds for revocation of any permit by the Town Board in its discretion.

§ 75-5. Topsoil stripping and removal.

No stripping or removal of topsoil shall be made within 10 feet of any property line, and, upon completion of the work, the premises, if below grade, shall be graded to the level of the abutting highway or the original grade if the same were below the level of the highway. Dustdown, or its equal, shall be spread to prevent dust from flying, and there shall be left upon the surface of the land from which topsoil is removed not less than five inches of topsoil from the original topsoil removed. All areas from which topsoil is removed shall, during the period between April 1 and May 15 or August 15 and October 1, be prepared into a loose level seedbed, limed, fertilized and seeded in the following steps:

- A. Areas to be used for nonagricultural purposes:
 - (1) Apply ground limestone at the rate of three tons per acre.
 - (2) Apply 5-10-10 fertilizer at the rate of 600 pounds per acre.
 - (3) Disk area to work limestone and fertilizer into the soil to a depth of at least three inches.
 - (4) Smooth area with a smoothing harrow.
 - (5) Sow the following seed mixture at the rate of 24 pounds per acre.

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Seed	Pounds
New York State broadleaf trefoil	7
Timothy	5
Kentucky bluegrass	2
Ryegrass	10
	Total: 24

(6) Brush in seed lightly.

(7) Roll firm with ground roller.

B. Where this area is to be used for agricultural purposes, regular farm practices shall be deemed compliance.

§ 75-6. Bond or deposit required; certificate of completion.

The following provisions shall be applicable to all excavations and topsoil removal:

- A. Before the issuance of a permit, the applicant and the owner of record of the premises shall execute and file with the Town Clerk a bond, approved by the Town Board of the Town of Elma, in an amount to be fixed by said Board, but not less than \$2,000, with a surety company as surety and conditioned for the faithful performance of the conditions contained in this article, the observance of all state, county and municipal ordinances and laws and to indemnify the Town of Elma and/or the Superintendent of Highways for any damage to Town property. In the event of a default, such bond shall be forfeited to the Town of Elma. **[Amended 2-21-1968]**
- B. Said bond shall remain in full force and effect until a certificate of completion has been issued by the Town Board, certifying to the fact that all provisions of this article and conditions of the permit have been fully complied with. Application for such certificate shall be made by the applicant, owner, lessee or his agent on forms provided by the Town of Elma and shall be accompanied by a map drawn to scale showing a cross section of the affected property, giving elevations thereof as provided in § 75-3B(2) of this article, after the completion of operations, who shall also certify that there is not less than five inches of topsoil remaining upon the ground from which topsoil has been removed and that such area has been seeded in compliance with § 75-5 hereof.
- C. In lieu of such bond, a cash deposit or deposit of negotiable securities may be made with the Supervisor of the Town of Elma.

§ 75-7. Permits; fees. [Amended 2-21-1968, 3-7-1979]

- A. The Town Clerk, when authorized by the Town Board, shall issue permits and charge and collect the following fees: fees for removal of topsoil, gravel, fill, rock and subsoil, which shall be as fixed by resolution of the Town Board, from time to time.
- B. Payments of the fee for permits shall be made at the time of application and thereafter on the 15th day of March of the calendar year, if said permit is renewed and extended.
- C. All permits shall expire on March 15 of each year unless extended by the Town Board.

§ 75-8. Exemptions from provisions.

- A. Nothing contained in this article shall require a person to obtain a permit for or prevent a person from removing topsoil, gravel or fill from one part of his lands to another part of the same premises when such removal is necessary as an accessory use or is made for the purpose of farming or improving said property.

§ 75-8

B. Excavations for ponds, land drainage diversions or other conservation measures which are installed in accordance with a written plan of conservation operations contained in agreement with the Erie County Soil Conservation District are exempt from the provisions of this article. Before any excavation is commenced under this section, such agreement shall be displayed to the Town Board.

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§ 75-9. Variances or modification of provisions.

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this article, the Town Board shall have power to vary and modify the application of such article so that the spirit of the article shall be observed, public safety and welfare secured and substantial justice done.

§ 75-10. Penalties for offenses. [Amended 6-3-1981]

For any and every violation of the provisions of this article, the owner, general agent or contractor of a building or premises where such violations have been committed or shall exist and the lessee or tenant of the premises where such violation has been committed or shall exist and the owner, general agent, contractor, lessee or tenant of any part of the premises in which part of said violation has been committed or shall exist and the general agent, architect, engineer, surveyor or building contractor who maintains, permits, takes part or assists in any such violation or who maintains any premises in which such violation shall exist shall be guilty of a violation, punishable by a fine of not more than \$250 or by imprisonment for a term of not more than 15 days, or both. Each week's continued willful violation shall constitute a separate additional violation. Such fines or penalties shall be collected as like fines are now by law collected.

ARTICLE II
Registry of Operations of Underground Facilities
[Adopted 3-19-1975]

§ 75-11. Designation of central registry.

The Town Clerk's office of the Town of Elma is designated as the central registry for the Town of Elma in accordance with the requirements of 12 NYCRR 53.³²

§ 75-12. Maintenance of records; dissemination of information.

The Town Clerk shall maintain such records and disseminate such information as is required by said 12 NYCRR 53, and as the same may be modified from time to time.

§ 75-13. Notice to excavators.

The Town Clerk shall publish in the East Aurora Advertiser, the official newspaper of the Town of Elma, a notice to excavators of the establishment of the central registry of operators of underground facilities for two successive weeks.

§ 75-14. Fee.

The Town Clerk shall collect a fee of \$2 for each list of operators of underground facilities delivered to excavators in accordance with 12 NYCRR 53.

32. Editor's Note: Former 12 NYCRR 53 was repealed; see now 16 NYCRR 753.

Chapter 77

FILLING AND GRADING

§ 75-14

[HISTORY: Adopted by the Town Board of the Town of Elma 2-21-2001. Amendments noted where applicable.]

§ 75-14

GENERAL REFERENCES

Building construction — See Ch. 52.

Site plan review — See Ch. 117.

Excavations — See Ch. 75.

Subdivision of land — See Ch. 123.

Flood damage prevention — See Ch. 82.

Zoning — See Ch. 144.

Acreage lot development — See Ch. 100.

§ 77-1. Drainage plan required. [Amended 7-20-2011; 8-21-2013]

- A. Filling of lands within the Town of Elma shall require a stamped engineered drainage plan showing existing and proposed elevations, any drainage waterways, wetlands, and drainage contours in one-foot increments. After review of the proposed project and the site plan has been submitted, the Building Inspector and Town Engineer may require additional information pertaining to the site. The Building Inspector and Town Engineer may at any time require a drainage district be formed with a public hearing and Town Board approval regarding the site. Permits will only be valid for six months. The adopted fee schedule by the Elma Town Board applies for permits. The table below sets forth when a permit and above-listed requirements are required for filling of lands in the Town of Elma:
- (1) Three hundred to 400 yards on a one to two acre site.
 - (2) Four hundred to 600 yards on a two to three acre site.
 - (3) Six hundred to 800 yards on a three to four acre site.
 - (4) Eight hundred yards on a lot greater than four acres.
 - (5) More than eight hundred yards of fill requires Town Board approval.
- B. Exemptions to above subsection. Contractors/developers/owners of property shall not be required to obtain a fill permit when:
- (1) The applicant already has received a final site plan approval for the project through the Elma Planning Board (must have stamped drainage plan with site plan approval).
 - (2) For a new residential house permit where a stamped engineered drainage plan is filed with the Building Department and the drainage plan has been approved by the Building Department and Town Engineer. No filling shall take place until a building permit has been issued.
 - (3) Driveways and parking lots.
- C. The Building Inspector at any time may impose a stop-work order when there is found to be a violation of filling lands within the Town of Elma.
- D. Fines in accordance to § 77-2 will be applied if any filling of land has taken place without approvals/permits.
- E. Any person who is filling land must still fill out an application even though he/she may be exempt.

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§ 77-2. Penalties for offenses.

Any person or entity that fails to comply with the above requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days, or both. Each day of noncompliance or each load shall be considered a separate offense. Nothing herein contained shall prevent the Town of Elma from taking such other lawful action as necessary to prevent or remedy an infraction.

Chapter 79

FIRE PREVENTION

§ 77-2

[Ordinance No. 21, adopted by the Elma Town Board on February 1, 1978, established standards for fire prevention. A copy of said ordinance is on file in the office of the Town Clerk for use and examination by the public.]

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Chapter 82

FLOOD DAMAGE PREVENTION

**[HISTORY: Adopted by the Town Board of the Town of Elma 4-17-2019 by L.L. No. 1-2019.³³
Amendments noted where applicable.]**

GENERAL REFERENCES

Building construction — See Ch. 52.

Site plan review — See Ch. 117.

Excavations — See Ch. 75.

Stormwater management — See Ch. 120.

Filling and grading — See Ch. 77.

Subdivision of land — See Ch. 123.

Mobile home parks — See Ch. 97.

Zoning — See Ch. 144.

33. Editor's Note: This local law also superseded former Ch. 82, Flood Damage Prevention, adopted 5-6-1987 by L.L. No. 2-1987, as amended.

ARTICLE I
Statutory Authorization and Purpose

§ 82-1. Findings.

The Elma Town Board of the Town of Elma finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Elma and that such damages may include: destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this chapter is adopted.

§ 82-2. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Regulate uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;
- D. Control filling, grading, dredging and other development which may increase erosion or flood damages;
- E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and
- F. Qualify for and maintain participation in the National Flood Insurance Program.

§ 82-3. Objectives.

The objectives of this chapter are:

- A. To protect human life and health;
- B. To minimize expenditure of public money for costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. To provide that developers are notified that property is in an area of special flood hazard; and
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

ARTICLE II Terminology

§ 82-4. Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

ACCESSORY STRUCTURE — A structure used solely for parking (two-car detached garages or smaller) or limited storage, representing a minimal investment of not more than 10% of the value of the primary structure, and may not be used for human habitation.

APPEAL — A request for a review of the Local Administrator's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING — A designated AO, AH or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a 1% or greater annual chance of flooding to an average annual depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE, or V1-V30. It is also commonly referred to as the "base floodplain" or "100-year floodplain." For purposes of this chapter, the term "special flood hazard area (SFHA)" is synonymous in meaning with the phrase "area of special flood hazard."

BASE FLOOD — The flood having a 1% chance of being equaled or exceeded in any given year.

BASEMENT — That portion of a building having its floor subgrade (below ground level) on all sides.

BUILDING — See "structure."

CELLAR — Has the same meaning as "basement."

CRAWL SPACE — An enclosed area beneath the lowest elevated floor, 18 inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above the lowest adjacent exterior grade. The enclosed crawl space area shall be properly vented to allow for the equalization of hydrostatic forces which would be experienced during periods of flooding.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING — A nonbasement building i) built, in the case of a building in Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, to have the top of the elevated floor, or, in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor, elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water; and ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters. In the case of Zones V1-V30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls that meet the federal standards.

FEDERAL EMERGENCY MANAGEMENT AGENCY — The federal agency that administers the National Flood Insurance Program.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) — An official map of the community published by the

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Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The FBFM delineates a regulatory floodway along watercourses studied in detail in the Flood Insurance Study.

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FLOOD ELEVATION STUDY — An examination, evaluation and determination of the flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOOD HAZARD BOUNDARY MAP (FHBM) — An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been designated as Zone A but no flood elevations are provided.

FLOOD INSURANCE RATE MAP (FIRM) — An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY — See "flood elevation study."

FLOOD or FLOODING —

- A. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) The overflow of inland or tidal waters;
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- B. "Flood" or "flooding" also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in Subsection A(1) of this definition.

FLOODPLAIN or FLOOD-PRONE AREA — Any land area susceptible to being inundated by water from any source. (See definition of "flooding.")

FLOODPROOFING — Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY — Has the same meaning as "regulatory floodway."

FUNCTIONALLY DEPENDENT USE — A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, and ship repair facilities. The term does not include long-term storage, manufacturing, sales, or service facilities.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

HISTORIC STRUCTURE — Any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which

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have been approved by the Secretary of the Interior; or

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D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

- (1) By an approved state program as determined by the Secretary of the Interior; or
- (2) Directly by the Secretary of the Interior in states without approved programs.

LOCAL ADMINISTRATOR — The person appointed by the community to administer and implement this chapter by granting or denying development permits in accordance with its provisions. This person is often the Building Inspector, Code Enforcement Officer, or employee of an Engineering Department.

LOWEST FLOOR — The lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME — A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term does not include a recreational vehicle.

MANUFACTURED HOME PARK OR SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL — For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum of 1988 (NAVD 88), or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MOBILE HOME — Has the same meaning as "manufactured home."

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the community, and includes any subsequent improvements to such structure.

ONE-HUNDRED-YEAR FLOOD or 100-YEAR FLOOD — Has the same meaning as "base flood."

PRINCIPALLY ABOVE GROUND — At least 51% of the actual cash value of the structure, excluding land value, is above ground.

RECREATIONAL VEHICLE — A vehicle which is:

- A. Built on a single chassis;
- B. Four hundred square feet or less when measured at the largest horizontal projections;
- C. Designed to be self-propelled or permanently towable by a light-duty truck; and
- D. Not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 82-14B of this chapter.

START OF CONSTRUCTION — The date of permit issuance for new construction and substantial improvements to existing structures, provided that actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement is within 180 days after the date of issuance. The "actual start of construction" means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns. Permanent construction

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does not include land preparation (such as clearing, excavation, grading, or filling), or the installation of streets or walkways, or excavation for a basement, footings, piers or foundations, or the erection of temporary forms, or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the "actual start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE — A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. The term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

VARIANCE — A grant of relief from the requirements of this chapter which permits construction or use in a manner that would otherwise be prohibited by this chapter.

VIOLATION — The failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

ARTICLE III
General Provisions

§ 82-5. Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Town of Elma.

§ 82-6. Basis for establishing areas of special flood hazard.

- A. The areas of special flood hazard are identified and defined on the following documents prepared by the Federal Emergency Management Agency:
- (1) Flood Insurance Rate Maps: 36029C0352H, 36029C0354H, 36029C0356H, 36029C0357H, 36029C0358H, 36029C0359H, 36029C0362H, 36029C0366H, 36029C0367H, 36029C0376H, 36029C0377H, 36029C0378H, 36029C0379H, 36029C0386H, and 36029C0387H, whose effective date is June 7, 2019, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction.
 - (2) A scientific and engineering report entitled "Flood Insurance Study, Erie County, New York (All Jurisdictions)," dated June 7, 2019.
- B. The above documents are hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and/or maps are on file at: 1600 Bowen Road; Elma, NY 14059; Attn: Building Inspector's Office.

§ 82-7. Interpretation and conflict with other laws.

- A. This chapter includes all revisions to the National Flood Insurance Program through October 27, 1997, and shall supersede all previous laws adopted for the purpose of flood damage prevention.
- B. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

§ 82-8. Severability.

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

§ 82-9. Penalties for noncompliance.

No structure in an area of special flood hazard shall hereafter be constructed, located, extended, converted, or altered, and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town of Elma from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under Article VI will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

§ 82-10. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is

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based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Elma, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

ARTICLE IV
Administration

§ 82-11. Designation of Local Administrator.

The Code Enforcement Officer is hereby appointed Local Administrator to administer and implement this chapter by granting or denying floodplain development permits in accordance with its provisions.

§ 82-12. Floodplain development permit.

- A. Purpose. A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in § 82-6, without a valid floodplain development permit. Application for a permit shall be made on forms furnished by the Local Administrator and may include, but not be limited to: plans, in duplicate, drawn to scale and showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, and drainage facilities; and the location of the foregoing.
- B. Fees. All applications for a floodplain development permit shall be accompanied by an application fee of \$450. In addition, the applicant shall be responsible for reimbursing the Town of Elma for any additional costs necessary for review, inspection and approval of this project. The Local Administrator may require a deposit of no more than \$500 to cover these additional costs.

§ 82-13. Application for permit.

The applicant shall provide the following information as appropriate. Additional information may be required on the permit application form.

- A. The proposed elevation, in relation to mean sea level, of the lowest floor (including basement or cellar) of any new or substantially improved structure to be located in Zones A1-A30, AE or AH, or Zone A if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the Local Administrator the as-built elevation, certified by a licensed professional engineer or surveyor.
- B. The proposed elevation, in relation to mean sea level, to which any new or substantially improved nonresidential structure will be floodproofed. Upon completion of the floodproofed portion of the structure, the permittee shall submit to the Local Administrator the as-built floodproofed elevation, certified by a professional engineer or surveyor.
- C. A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in § 82-16C, Utilities.
- D. A certificate from a licensed professional engineer or architect that any nonresidential floodproofed structure will meet the floodproofing criteria in § 82-18, Nonresidential structures.
- E. A description of the extent to which any watercourse will be altered or relocated as a result of proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the documents enumerated in § 82-6, when notified by the Local Administrator, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained.

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F. A technical analysis, by a licensed professional engineer, if required by the Local Administrator, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.

§ 82-14

G. In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed developments (including proposals for manufactured home and recreational vehicle parks and subdivisions) that are greater than either 50 lots or five acres.

§ 82-14. Duties and responsibilities of Local Administrator.

Duties of the Local Administrator shall include, but not be limited to, the following.

A. Permit application review. The Local Administrator shall conduct the following permit application review before issuing a floodplain development permit:

- (1) Review all applications for completeness, particularly with the requirements of § 82-13, Application for permit, and for compliance with the provisions and standards of this law.
- (2) Review subdivision and other proposed new development, including manufactured home parks, to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in an area of special flood hazard, all new construction and substantial improvements shall meet the applicable standards of Article V, Construction Standards, and, in particular, § 82-15A, Subdivision proposals.
- (3) Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The Local Administrator may require the applicant to submit additional technical analyses and data necessary to complete the determination. If the proposed development may result in physical damage to any other property or fails to meet the requirements of Article V, Construction Standards, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and resubmit the application.
- (4) Determine that all necessary permits have been received from those governmental agencies from which approval is required by state or federal law.

B. Use of other flood data.

- (1) When the Federal Emergency Management Agency has designated areas of special flood hazard on the community's Flood Insurance Rate Map (FIRM) but has neither produced water surface elevation data (These areas are designated Zone A or V on the FIRM.) nor identified a floodway, the Local Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to § 82-13G, as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this chapter.
- (2) When base flood elevation data are not available, the Local Administrator may use flood information from any other authoritative source, such as historical data, to establish flood elevations within the areas of special flood hazard, for the purposes of this chapter.
- (3) When an area of special flood hazard, base flood elevation, and/or floodway data are available from a federal, state or other authoritative source, but differ from the data in the documents enumerated in § 82-6, the Local Administrator may reasonably utilize the other flood information to enforce more restrictive development standards.

C. Alteration of watercourses.

- § 82-14 (1) Notify adjacent municipalities that may be affected and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Administrator, Region II, Federal Emergency Management Agency. § 82-14
- (2) Determine that the permit holder has provided for maintenance within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

D. Construction stage.

- (1) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, upon placement of the lowest floor or completion of floodproofing of a new or substantially improved structure, obtain from the permit holder a certification of the as-built elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. A certificate of elevation must also be submitted for a recreational vehicle if it remains on a site for 180 consecutive days or longer (unless it is fully licensed and ready for highway use).
- (2) Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The Local Administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.

E. Inspections. The Local Administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify, if requested, that the development is in compliance with the requirements of the floodplain development permit and/or any variance provisions.

F. Stop-work orders.

- (1) The Local Administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found ongoing without a development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 82-9 of this chapter.
- (2) The Local Administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 82-9 of this chapter.

G. Certificate of compliance.

- (1) In areas of special flood hazard, as determined by documents enumerated in § 82-6, it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Local Administrator stating that the building or land conforms to the requirements of this chapter.
- (2) A certificate of compliance shall be issued by the Local Administrator upon satisfactory completion of all development in areas of special flood hazard.
- (3) Issuance of the certificate shall be based upon the inspections conducted as prescribed in § 82-14E, Inspections, and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.

H. Information to be retained. The Local Administrator shall retain and make available for inspection copies of

§ 82-14
the following:

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- (1) Floodplain development permits and certificates of compliance;
- (2) Certifications of as-built lowest floor elevations of structures required pursuant to § 82-14D(1) and (2), and whether or not the structures contain a basement;
- (3) Floodproofing certificates required pursuant to § 82-14D(1), and whether the structures contain a basement;
- (4) Variances issued pursuant to Article VI, Variance Procedures; and
- (5) Notices required under § 82-14C, Alteration of watercourses.

ARTICLE V
Construction Standards

§ 82-15. General standards.

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 82-6.

- A. Subdivision proposals. The following standards apply to all new subdivision proposals and other proposed development in areas of special flood hazard (including proposals for manufactured home and recreational vehicle parks and subdivisions):
 - (1) Proposals shall be consistent with the need to minimize flood damage;
 - (2) Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed to minimize flood damage; and
 - (3) Adequate drainage shall be provided to reduce exposure to flood damage.
- B. Encroachments.
 - (1) Within Zones A1-A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless:
 - (a) The applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any location; or
 - (b) The Town of Elma agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Elma for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Elma for all costs related to the final map revision.
 - (2) On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in § 82-6, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:
 - (a) A technical evaluation by a licensed professional engineer demonstrates through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood; or
 - (b) The Town of Elma agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM and floodway revision, FEMA approval is received, and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Elma for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Elma for all costs related to the final map revisions.
 - (3) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, if any development is found to increase or decrease base flood elevations, the Town of Elma shall as soon as practicable, but not later than six months after the date such information becomes available, notify FEMA and the New York State Department of Environmental Conservation of the changes by submitting technical or scientific data in accordance with standard engineering practice.

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 82-6.

- A. Anchoring. New structures and substantial improvement to structures in areas of special flood hazard shall be anchored to prevent flotation, collapse, or lateral movement during the base flood. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- B. Construction materials and methods.
 - (1) New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.
 - (2) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.
 - (3) For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE, AO or A, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement, and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - (a) A minimum of two openings of each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - (b) The bottom of all such openings no higher than one foot above the lowest adjacent finished grade; and
 - (c) Openings not less than three inches in any direction.
 - (4) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided they permit the automatic entry and exit of floodwaters. Enclosed areas subgrade on all sides are considered basements and are not permitted.
- C. Utilities.
 - (1) New and replacement electrical equipment, heating, ventilating, air-conditioning, plumbing connections, and other service equipment shall be located at least two feet above the base flood elevation, or at least three feet above the highest adjacent grade in a Zone A without an available base flood elevation, or be designed to prevent water from entering and accumulating within the components during a flood and to resist hydrostatic and hydrodynamic loads and stresses. Electrical wiring and outlets, switches, junction boxes and panels shall be elevated or designed to prevent water from entering and accumulating within the components unless they conform to the appropriate provisions of the electrical part of the Building Code of New York State or the Residential Code of New York State for location of such items in wet locations;
 - (2) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
 - (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall; and

- § 82-16 (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. § 82-18

D. Storage tanks.

- (1) Underground tanks shall be anchored to prevent flotation, collapse and lateral movement during conditions of the base flood.
- (2) Aboveground tanks shall be:
 - (a) Anchored to prevent flotation, collapse or lateral movement during conditions of the base flood; or
 - (b) Installed at or above the base flood elevation as shown on the Flood Insurance Rate Map enumerated in § 82-6, plus two feet.

§ 82-17. Residential structures.

- A. Elevation. The following standards apply to new and substantially improved residential structures located in areas of special flood hazard, in addition to the requirements in § 82-15A, Subdivision proposals, and B, Encroachments, and § 82-16, Standards for all structures.
- (1) Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated to or above two feet above the base flood elevation.
 - (2) Within Zone A, when no base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated at least three feet above the highest adjacent grade.
 - (3) Within Zone AO, new construction and substantial improvements shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in § 82-6, plus two feet (at least three feet if no depth number is specified).
 - (4) Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.

§ 82-18. Nonresidential structures.

The following standards apply to new and substantially improved commercial, industrial and other nonresidential structures located in areas of special flood hazard, in addition to the requirements in § 82-15A, Subdivision proposals, and B, Encroachments, and § 82-16, Standards for all structures.

- A. Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements of any nonresidential structure shall either:
- (1) Have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or
 - (2) Be floodproofed so that the structure is watertight below two feet above the base flood elevation, including attendant utility and sanitary facilities, with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- B. Within Zone AO, new construction and substantial improvements of nonresidential structures shall:
- (1) Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as

§ 82-18 the depth number specified in feet on the community's FIRM, plus two feet (at least three feet if no depth number is specified); or § 82-20

- (2) Together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in § 82-18A(2).
- C. If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A floodproofing certificate or other certification shall be provided to the Local Administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of § 82-18A(2), including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.
- D. Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.
- E. Within Zone A, when no base flood elevation data are available, the lowest floor (including basement) shall be elevated at least three feet above the highest adjacent grade.

§ 82-19. Manufactured homes and recreational vehicles.

The following standards, in addition to the standards in §§ 82-15, General standards, and 82-16, Standards for all structures, apply, as indicated, in areas of special flood hazard to manufactured homes and to recreational vehicles which are located in areas of special flood hazard.

- A. Recreational vehicles.
 - (1) Recreational vehicles placed on sites within Zones A1-A30, AE and AH shall either:
 - (a) Be on site fewer than 180 consecutive days;
 - (b) Be fully licensed and ready for highway use; or
 - (c) Meet the requirements for manufactured homes in § 82-19B, C and D.
 - (2) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices and has no permanently attached additions.
- B. A manufactured home that is placed or substantially improved in Zones A1-A30, AE and AH shall be elevated on a permanent foundation such that the bottom of the frame of the manufactured home chassis is elevated to or above two feet above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- C. Within Zone A, when no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that the bottom of the frame of the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement.
- D. Within Zone AO, the bottom of the frame of the manufactured home chassis shall be elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map enumerated in § 82-6, plus two feet (at least three feet if no depth number is specified).

§ 82-20. Accessory structures, including detached garages.

The following standards apply to new and substantially improved accessory structures, including detached garages, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 82-6.

§ 82-20

- A. Within Zones A1-A30, AE, AO, AH, A, accessory structures must meet the standards of § 82-16A, Anchoring.
- B. Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, areas below two feet above the base flood elevation shall be constructed using methods and practices that minimize flood damage.
- C. Within Zones AO and Zone A, if base flood elevation data are not available, areas below three feet above the highest adjacent grade shall be constructed using methods and practices that minimize flood damage.
- D. Structures must be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters in accordance with § 82-16B(3).
- E. Utilities must meet the requirements of § 82-16C, Utilities.

§ 82-20

ARTICLE VI
Variance Procedure

§ 82-21. Appeals board.

- A. The Zoning Board of Appeals as established by the Town of Elma shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Local Administrator in the enforcement or administration of this chapter.
- C. Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- D. In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:
 - (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;
 - (5) The necessity to the facility of a waterfront location, where applicable;
 - (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
 - (11) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (12) The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.
- E. Upon consideration of the factors of Subsection D and the purposes of this chapter, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- F. The Local Administrator shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency upon request.

§ 82-22. Conditions for variances.

§ 82-22

§ 82-22

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the items in § 82-21D(1) through (12) have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- B. Variances may be issued for the repair or rehabilitation of historic structures upon determination that:
- (1) The proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure; and
 - (2) The variance is the minimum necessary to preserve the historic character and design of the structure.
- C. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:
- (1) The criteria of Subsections A, D, E, and F of this section are met; and
 - (2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.
- D. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- E. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- F. Variances shall only be issued upon receiving written justification of:
- (1) A showing of good and sufficient cause;
 - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, or create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- G. Written notice.
- (1) Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice over the signature of a community official that:
 - (a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
 - (b) Such construction below the base flood level increases risks to life and property.
 - (2) Such notification shall be maintained with the record of all variance actions as required in § 82-14H of this chapter.

Chapter 86

GAMES OF CHANCE

§ 82-22

[HISTORY: Adopted by the Town Board of the Town of Elma 6-6-1979 by Ord. No. 22. Amendments noted where applicable.]

§ 82-22

GENERAL REFERENCES

Bingo — See Ch. 48.

§ 86-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AUTHORIZED ORGANIZATION — An authorized organization, as defined in Subdivision 4 of § 186 of the General Municipal Law.

GAMES OF CHANCE — Games of chance, as defined in Subdivision 3 of § 186 of the General Municipal Law.

§ 86-1

§ 86-2

§ 86-2. Games of chance authorized; license required.

Authorized organizations may, upon obtaining a license from the Town Clerk of Elma, conduct games of chance within the Town of Elma as provided in Article 9-A of the General Municipal Law and as provided further in this chapter. Such games of chance shall be conducted in accordance with the laws of the State of New York and with the rules and regulations adopted by the New York State Racing and Wagering Board and pursuant to this chapter.

§ 86-2

§ 86-3

§ 86-3. Restrictions on conduct of games.

The conduct of games of chance shall be subject to the restrictions imposed by § 189 of the General Municipal Law.

§ 86-3

§ 86-4

§ 86-4. Sunday games.

Games of chance may be conducted on Sunday pursuant to this chapter. However, no games of chance shall be conducted on Easter Sunday, Christmas Day or New Year's Eve.

§ 86-4

§ 86-5

§ 86-5. Supervision of games.

The Supervisor of the Town of Elma shall exercise control over and supervision of all games of chance conducted under duly authorized license. The Supervisor shall have all those powers and duties set forth in and for the enforcement of Article 9-A of the General Municipal Law.

§ 86-5

§ 86-6

§ 86-6. When effective.

This chapter shall take effect immediately following its approval by majority of the qualified voters of the Town of Elma voting on a proposition therefor at a special election held pursuant to the provisions of § 82 of the Town Law.³⁴

34. Editor's Note: This ordinance was approved at a special election held 6-28-1979.

Chapter 87

HISTORIC PRESERVATION

§ 86-6

§ 86-6

[HISTORY: Adopted by the Town Board of the Town of Elma 7-17-2013 by L.L. No. 2-2013. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 52.

Zoning — See Ch. 144.

§ 87-1. Purpose.

It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of landmarks and historic districts are necessary to promote the economic, cultural, educational, and general welfare of the public. Inasmuch as the identity of a people is founded on its past and inasmuch as Elma has many significant historic, architectural and cultural resources, which constitute its heritage, this chapter is intended to:

- A. Protect and enhance the landmarks and historic districts, which represent distinctive elements of Elma's historic, architectural, and cultural heritage;
- B. Foster civic pride in the accomplishments of the past;
- C. Protect and enhance Elma's attractiveness to visitors and the support and stimulus to the economy thereby provided; and
- D. Insure the harmonious, orderly, and efficient growth and development of the Town.

§ 87-2. Historic Preservation Commission. [Amended 12-7-2016 by L.L. No. 5-2016]

There is hereby created a commission to be known as the "Elma Historic Preservation Commission."

- A. The Commission shall consist of seven members to be appointed, to the extent available in the community, by the Supervisor as follows:
 - (1) At least one shall be an architect experienced in working with historic buildings;
 - (2) At least one shall be a historian;
 - (3) At least one shall be a resident of an historic district;
 - (4) At least one shall have demonstrated significant interest in and commitment to the field of historic preservation evidenced either by involvement in a local historic preservation group, employment or volunteer activity in the field of historic preservation, or other serious interest in the field; and
 - (5) All members shall have a known interest in historic preservation and architectural development within the Town of Elma.
- B. Commission members shall serve for a term of seven years, with the exception of the initial term of one of the seven members, which shall be one year, one, which shall be two years, and one, which shall be three years.
- C. The Chairman of the Commission shall be appointed by the Town Supervisor and approved by the Town Board in the organization agenda.
- D. The powers of the Commission shall include:
 - (1) Employing staff and professional consultants as necessary to carry out the duties of the Commission;
 - (2) Promulgating rules and regulations as necessary to carry out the duties of the Commission;
 - (3) Adopting criteria for the identification of significant historic, architectural, and cultural landmarks and for the delineation of historic districts;
 - (4) Conducting surveys of significant historic, architectural, and cultural landmarks and historic districts within the Town;
 - (5) Designating identified structures or resources as landmarks and historic districts;
 - (6) Accepting on behalf of the Town government the donation of facade easements and development rights and the making of recommendations to the Town government concerning the acquisition of facade easements or other interests in real property as necessary to carry out the purposes of this act;
 - (7) Increasing public awareness of the value of historic, cultural and architectural preservation by developing and participating in public education programs;
 - (8) Making recommendations to Town government concerning the utilization of state, federal or private funds to promote the preservation of landmarks and historic districts within the Town;
 - (9) Recommending acquisition of a landmark structure by the Town government where its preservation is essential to the purposes of this act and where private preservation is not feasible; and
 - (10) Approving or disapproving of applications for certificates of appropriateness pursuant to this chapter.
- E. The Commission shall meet at least monthly, but meetings may be held at any time on the written request of any two of the Commission members or on the call of the Chairman, the Town Supervisor or the Town Board.

§ 87-2

F. A quorum for the transaction of business shall consist of four of the Commission's members; not less than § 87-2
four of the full-authorized membership may grant or deny a certificate of appropriateness.

§ 87-3. Designation of landmarks or historic districts.

- A. The Commission may designate an individual property as a landmark if it:
- (1) Possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic or social history of the locality, region, state or nation; or
 - (2) Is identified with historic personages; or
 - (3) Embodies the distinguishing characteristics of an architectural style; or
 - (4) Is the work of a designer whose work has significantly influenced an age; or
 - (5) Because of unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood.
- B. The Commission may designate a group of properties as an historic district if it: 1) contains properties which meet one or more of the criteria for designation of a landmark; and 2) by reason of possessing such qualities, it constitutes a distinct section of the Town. The boundaries of each historic district designated henceforth shall be specified in detail and shall be filed, in writing, in the Town Clerk's office for public inspection.
- C. Notice of a proposed designation shall be sent by registered mail to the owner of the property proposed for designation, describing the property and announcing a public hearing by the Commission to consider the designation. Where the proposed designation involves so many owners that individual notice is infeasible, notice may instead be published at least once in a newspaper of general circulation at least 30 days prior to the date of the public hearing. Once the Commission has issued notice of a proposed designation, no building permits shall be issued by the Building Inspector until the Commission has made its decision.
- D. The Commission shall hold a public hearing prior to designation of any landmark or historic district. The Commission, owners and any interested parties may present testimony or documentary evidence at the hearing which will become part of a record regarding the historic, architectural, or cultural importance of the proposed landmark or historic district. The record may also contain staff reports, public comments, or other evidence offered outside of the hearing.
- E. The Commission shall forward notice of each property designated as a landmark and the boundaries of each designated historic district to the office of the Erie County Clerk for recordation.

§ 87-3

§ 87-4

§ 87-4. Certificate of appropriateness for alteration, demolition or new construction.

No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction, or moving of a landmark or property within an historic district, nor shall any person make any material change in the appearance of such property, its light fixtures, signs, sidewalks, fences, steps, paving or other exterior elements which affect the appearance and cohesiveness of the landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Preservation Commission.

§ 87-5. Criteria for approval of certificate of appropriateness.

- A. In passing upon an application for a certificate of appropriateness, the Historic Preservation Commission shall not consider changes to interior spaces, unless they are open to the public. The Commission's decision shall be based on the following principles:
- (1) Properties which contribute to the character of the historic district shall be retained, with their historic features altered as little as possible;
 - (2) Any alteration of existing properties shall be compatible with their historic character, as well as with the surrounding district; and
 - (3) New construction shall be compatible with the district in which it is located.
- B. In applying the principle of compatibility, the Commission shall consider the following factors:
- (1) The general design, character and appropriateness to the property of the proposed alteration or new construction;
 - (2) The scale of proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;
 - (3) Texture, materials, and color and their relation to similar features of other properties in the neighborhood;
 - (4) Visual compatibility with surrounding properties, including proportion of the property's front facade, proportion and arrangement of windows and other openings within the facade, roof shape, and the rhythm of spacing of properties on streets, including setback; and
 - (5) The importance of historic, architectural or other features to the significance of the property.

§ 87-6. Certificate of appropriateness application procedure.

- A. Prior to the commencement of any work requiring a certificate of appropriateness, the owner shall file an application for such a certificate with the Historic Preservation Commission. The application shall contain:
- (1) Name, address and telephone number of applicant;
 - (2) Location and photographs of property;
 - (3) Elevation drawings of proposed changes, if available;
 - (4) Perspective drawings, including relationship to adjacent properties, if available;
 - (5) Samples of color or materials to be used;
 - (6) Where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination, and a plan showing the sign's location on the property; and
 - (7) Any other information which the Commission may deem necessary in order to visualize the proposed work.
- B. No building permit shall be issued for such proposed work until a certificate of appropriateness has first been issued by the Historic Preservation Commission. The certificate of appropriateness required by this chapter shall be in addition to and not in lieu of any building permit that may be required by any other ordinance of the Town of Elma. Before acting on or forwarding to the appropriate board any application for a variance, special use permit, site plan, building permit, demolition permit, sign permit or subdivision, the Building Inspector shall first consult a current list of all properties designated as individual landmarks or as contained within historic districts to determine the requesting property's status.
- C. The Commission shall approve, deny or approve the permit with modifications within 90 days from receipt of the completed application. The Commission may hold a public hearing on the application at which an opportunity will be provided for proponents and opponents of the application to present their views.
- D. All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Town Clerk's office for public inspection. The Commission's decision shall state the reasons for denying or modifying any application.
- E. Certificates of appropriateness shall be valid for 12 months, after which the owner must reapply if he still wishes to undertake work on the property.

§ 87-6

§ 87-7

§ 87-7. Hardship criteria for demolition.

An applicant whose certificate of appropriateness for a proposed demolition has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that:

- A. The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
- B. The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
- C. Efforts to find a purchaser interested in acquiring the property and preserving it have failed.

§ 87-7

§ 87-8

§ 87-8. Hardship criteria for alteration.

An applicant whose certificate of appropriateness for a proposed alteration has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible.

§ 87-8

§ 87-9

§ 87-9. Hardship application procedure.

- A. After receiving written notification from the Commission of the denial of a certificate of appropriateness, an applicant may commence the hardship process. No building permit or demolition permit shall be issued unless the Commission makes a finding that a hardship exists.
- B. The Commission may hold a public hearing on the hardship application at which an opportunity will be provided for proponents and opponents of the application to present their views.
- C. The applicant shall consult in good faith with the Commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property.
- D. All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Town Clerk's office for public inspection. The Commission's decision shall state the reasons for granting or denying the hardship application. If the application is granted, the Commission shall approve only such work as is necessary to alleviate the hardship.

§ 87-9

§ 87-10

§ 87-10. Enforcement.

All work performed pursuant to a certificate of appropriateness issued under this chapter shall conform to any requirements included therein. It shall be the duty of the Building Code Enforcement Officer to inspect periodically any such work to assure compliance. In the event work is found that is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the Historic Preservation Commission, the Building Code Enforcement Officer shall issue a stop-work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop-work order is in effect.

§ 87-11. Maintenance and repair required.

- A. Nothing in this chapter shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within an historic district which does not involve a change in design, material, color or outward appearance.
- B. No owner or person with an interest in real property designated as a landmark or included within an historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Historic Preservation Commission, produce a detrimental effect upon the character of the historic district as a whole or the life and character of the property itself.
- C. Examples of such deterioration include:
 - (1) Deterioration of exterior walls or other vertical supports.
 - (2) Deterioration of roofs or other horizontal members.
 - (3) Deterioration of exterior chimneys.
 - (4) Deterioration or crumbling of exterior stucco or mortar.
 - (5) Ineffective waterproofing of exterior walls, roofs or foundations, including broken windows or doors.
 - (6) Deterioration of any feature so as to create a hazardous condition, which could lead to the claim that demolition, is necessary for the public safety.

§ 87-11

§ 87-12

§ 87-12. Penalties for offenses. [Amended 12-7-2016 by L.L. No. 5-2016]

- A. Failure to comply with any of the provisions of this ordinance shall be deemed a violation and the violator shall be liable to a fine of not less than \$10 nor more than \$3,000 for each day the violation continues.
- B. Any person who demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair in violation of this chapter shall be required to restore the property and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought by the Town Attorney. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

§ 87-12

§ 87-13

§ 87-13. Appeals.

Any person aggrieved by a decision of the Historic Preservation Commission relating to hardship or a certificate of appropriateness may, within 15 days of the decision, file a written application with the Town Board for review of the decision. Reviews shall be conducted based on the same record that was before the Commission and using the same criteria.

Chapter 88

INDUSTRIAL DEVELOPMENT AGENCY

§ 87-13

[HISTORY: Adopted by the Town Board of the Town of Elma 5-9-1999. Amendments noted where applicable.]

§ 87-13

GENERAL REFERENCES

Building construction — See Ch. 52.

Site plan review — See Ch. 117.

Mobile home parks — See Ch. 97.

Subdivision of land — See Ch. 123.

Acreage lot development — See Ch. 100.

Zoning — See Ch. 144.

§ 88-1. Presumption of ownership in cases of third-party interests.

Whenever a parcel of land or a building is divided in interest whereby a portion is owned by an Industrial Development Agency, and leased to a third party or subject to an installment sale contract in favor of such third party, and the balance of the land or building is owned by such third party, then for the purposes of compliance with the zoning and building codes the parcel of land or building is considered to be owned by such third party.

Chapter 97

MOBILE HOME PARKS

§ 88-1

§ 88-1

[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 52.

Sewers — See Ch. 115.

Electrical standards — See Ch. 71.

Subdivision of land — See Ch. 123.

Fire prevention — See Ch. 79.

Water — See Ch. 140.

Flood damage prevention — See Ch. 82.

Zoning — See Ch. 144.

ARTICLE I
General Regulations
[Adopted 5-18-1977 by Ord. No. 19]

§ 97-1. Purpose.

This article is adopted in order to promote the health, safety and general welfare of the inhabitants of the Town of Elma by regulating the occupancy and maintenance of mobile homes and mobile home parks by establishing minimum standards for such parks.

§ 97-2. Design and construction standards.

- A. All improvements for mobile home parks shall be designed and constructed consistent with existing Elma Subdivision Regulations³⁵ and the regulations adopted pursuant to § 97-3A.³⁶ Such parks may be located in any residential zone in the Town of Elma, provided that such park complies with the Zoning Ordinance of the Town of Elma³⁷ with respect to lot size and square foot minimum dwelling size as required in the residential zone in which said park is proposed to be located. **[Amended 6-3-1981]**
- B. Streets, sewer, water, drainage and any other utilities shall be built in accordance with Town standards and shall be of permanent design and construction.
- C. The Planning Board and Town Board, in reviewing mobile home park plans for approval, shall be seeking design and layout consistent with conventional single-family dwellings.
- D. A mobile home, if it is to be occupied, may be located only in a mobile home park.

§ 97-3. Adoption of standards.

- A. The Town Board shall, by resolution, establish and from time to time amend or revise regulations establishing procedures for the approval of mobile home parks and standards for such parks and for mobile homes to be installed in said parks.
- B. Fees to accompany said application for approval shall likewise be established by the Town Board by resolution.

35. Editor's Note: See Ch. 123, Subdivision of Land.

36. Editor's Note: See Article II of this chapter.

37. Editor's Note: See Ch. 144, Zoning.

ARTICLE II
Design and Construction Standards
[Adopted 7-20-1977]

§ 97-4. Applicability.

These standards apply to the establishment, maintenance and operation of any mobile home park in the Town of Elma. Any revisions of these standards shall apply to mobile home parks licensed after the date of adoption of said revisions and to any mobile home park hereafter licensed hereunder.

§ 97-5. Provisions to be supplemental.

These standards supplement the Mobile Home Parks Ordinance, and Article I shall be considered to be part of these standards.

§ 97-6. Revision of standards.

These standards may be revised or amended by resolution of the Town Board at any regular meeting.

§ 97-7. Copies of standards on file.

The Town Clerk and the Building Inspector are directed to maintain one copy of these standards and all revisions in their respective offices, where they may be inspected by any interested person.

§ 97-8. General site improvement requirements.

- A. General. Condition of soil, groundwater level, drainage and topography shall not create hazards to the property or the health or safety of the occupants. The site shall not be exposed to objectionable smoke, noise, odors or other adverse influences; and no portion subject to unpredictable and/or sudden flooding, subsidence or erosion shall be used for any purpose which would expose persons or property to hazards.
- B. Soil and ground cover. Exposed ground surfaces in all parts of every mobile home park shall be paved or covered with stone screenings or other solid material or protected with a vegetative growth that is capable of preventing soil erosion and of eliminating objectionable dust.
- C. Site drainage requirements. The ground surface in all parts of every mobile home park shall be graded and equipped to drain all surface water in a safe, efficient manner.
- D. Nonresidential uses.
 - (1) No part of any park shall be used for nonresidential purposes, except as permitted by these regulations or by the Zoning Ordinance.³⁸
 - (2) Nothing contained in this article shall be deemed as prohibiting the sale of a mobile home located on a mobile home stand and connected to the pertinent utilities.

§ 97-9. Recreation areas.

- A. In all parks there shall be one or more recreation areas which shall be easily accessible to all park residents.
- B. The size of such recreation areas shall be based upon a minimum of 200 square feet for each lot. No outdoor recreation area shall contain less than 5,000 square feet.
- C. Recreation areas shall be so located as to be free of traffic hazards and should, where the topography permits,

38. Editor's Note: See Ch. 144, Zoning.

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be centrally located.

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§ 97-10. Setbacks, buffer strips and screening.

- A. All mobile homes shall be located at least 75 feet from any park property boundary line abutting upon a public street or highway and at least 50 feet from other park property boundary lines.
- B. There shall be a minimum distance of 15 feet between an individual mobile home and adjoining pavement of a park walk, street or common parking area or other common areas.
- C. All mobile home parks shall be provided with screening such as attractive and well-maintained fences or natural growth along the property boundary line separating the park and adjacent uses.

§ 97-11. Landscaping.

Trees and shrubs shall be provided along all walks and streets, around the recreation areas and along the outer property line at the mobile home park. Trees shall be planted at an interval of not less than 50 feet where feasible.

§ 97-12. Mobile home stands.

- A. The area of the mobile home stand shall be improved to provide an adequate foundation as set forth in the Building Code of the Town of Elma for the placement and tie-down of the mobile home, thereby securing the superstructure against uplift, sliding, rotation and overturning.³⁹
- B. The mobile home stand shall have heave, shift or settle unevenly under the weight of the mobile home due to frost action, inadequate drainage, vibration or other forces acting on the superstructure.
- C. The mobile home stand shall be provided with anchors and tie-downs such as cast-in-place concrete dead-men eyelets embedded in concrete foundations or runways, screw augers, arrowhead anchors or other devices securing the stability of the mobile home.
- D. Anchors and tie-downs shall be placed at least at each corner of the mobile home stand, and each shall be able to sustain a minimum tensile strength of 2,800 pounds.

§ 97-13. Water supply.

- A. General. No mobile home park permit shall be issued unless and until the water system therein is in accord with all the requirements of the Town of Elma Water Ordinance.⁴⁰
- B. Distribution and supply. All water installations shall be according to the requirements of the Elma Water Department as to materials and method of construction and installation. Complete plans for water distribution shall be submitted to the Water Superintendent for approval before any work is started. All fees and meter deposits shall be paid before any work is started. All work shall be inspected and tested by and with the Water Department and final approval secured from the Water Superintendent before water service is provided.
- C. Water services. All water services shall be subject to the provisions of the Town of Elma Water Ordinance.⁴¹

§ 97-14. Sewage disposal.

- A. General. An adequate and safe sewerage system shall be provided in all mobile home parks for conveying and disposing of all sewage. Such system shall be designed, constructed and maintained in accordance with state and local laws.

39. Editor's Note: See Ch. 52, Building Construction, and Ch. 82, Flood Damage Prevention.

40. Editor's Note: See Ch. 140, Water.

41. Editor's Note: See Ch. 140, Water.

§ 97-14

B. Sewer lines. All sewer lines shall be located in trenches of sufficient depth to be free of breakage from traffic or other movements and shall be separated from the park water supply system at a safe distance. Sewers shall be at a grade which will ensure a velocity of two feet per second when flowing full. All sewer lines shall be constructed of materials approved by the New York State Health Department, shall be adequately vented and shall have watertight joints.

C. Sewer connections.

- (1) Each mobile home stand shall be provided with at least a four-inch-diameter sewer riser pipe. The sewer riser pipe shall be so located on each stand that the sewer connection to the mobile home drain outlet will approximate a vertical position.
- (2) The sewer connection shall have a normal inside diameter of at least three inches, and the slope of any portion thereof shall be at least 1/4 inch per foot. The sewer connection shall consist of one pipeline only without any branch fittings. All joints shall be watertight. **[Amended 6-3-1981]**
- (3) All materials used for sewer connections shall be semirigid, corrosive resistant, nonabsorbent and durable. The inner surface shall be smooth.
- (4) Provision shall be made for plugging the sewer riser pipe when a mobile home does not occupy the lot. Surface drainage shall be diverted away from the riser. The rim of the riser pipe shall extend at least four inches above ground elevation.

D. Treatment and discharge. Where the sewer lines of the mobile home park are not connected to a public sewer, all proposed sewage disposal facilities shall conform to the regulations of the State Health Department prior to construction. Effluents from sewer treatment facilities discharged into any waters of the state shall conform to the regulations of the State Health Department.

§ 97-15. Electrical distribution system.

A. General. Every park shall contain an electrical wiring system consisting of wiring, fixtures, equipment and appurtenances which shall be installed and maintained in accordance with applicable codes and regulations governing such systems.⁴²

B. Electrical and telephone utilities.

- (1) The mobile home park operator shall arrange with the serving utility for underground installation of the utilities, distribution supply lines and service connections.
- (2) All direct burial conductor or cable shall be buried in accordance with the practice and provisions of the serving utilities.

C. Electrical connections.

- (1) Each mobile home lot shall be provided with an approved disconnecting device and overcurrent protective equipment. The minimum service per outlet shall be 120/240 volts A.C., 100 amperes.
- (2) Where the calculated load of the mobile home is more than 100 amperes, either a second outlet receptacle shall be installed or electrical service shall be provided by means of permanently installed conductors.

D. Grounding. All exposed non-current-carrying metal parts of mobile homes and all other equipment shall be grounded by means of an approved grounding conductor with branch circuit conductors or other approved method of grounded metallic wiring. The neutral conductor shall not be used as an equipment ground for

42. Editor's Note: See Ch. 71, Electrical Standards.

§ 97-15
mobile homes or other equipment.

§ 97-17

§ 97-16. Community service facilities.

- A. General. The requirements of these sections shall apply to service buildings, recreation buildings and other community service facilities, such as management offices, repair shops and storage areas; laundry facilities; and indoor recreation areas.
- B. Structural requirements.
 - (1) All portions of the structure shall be properly protected from damage by ordinary uses and by decay, corrosion, termites and other destructive elements. Exterior portions shall be of such materials and shall be so constructed and protected as to prevent entrance or penetration of moisture and weather.
 - (2) All rooms containing sanitary or laundry facilities shall:
 - (a) Have sound-resistant walls extending to the ceiling between male and female sanitary facilities. Walls and partitions around showers, bathtubs, lavatories and other plumbing fixtures shall be constructed of dense, nonabsorbent, waterproof material or covered with moisture-resistant material.
 - (b) Have at least one window or skylight facing directly to the outdoors. The minimum aggregate gross area of windows for each required room shall be not less than 10% of the floor area served by them.
 - (c) Have at least one window which can be easily opened or a mechanical device which will adequately ventilate the room.
 - (3) Toilets shall be located in separate compartments equipped with self-closing doors. Shower stalls shall be of the individual type. The rooms shall be screened to prevent direct view of the interior when the exterior doors are open. Toilet areas shall be lighted.
 - (4) Hot and cold water shall be furnished to every lavatory, sink, bathtub, shower and laundry fixture; and cold water shall be furnished to every water closet and urinal.
- C. Fireplaces, etc. Cooking shelters, barbecue pits, fireplaces and wood-burning stoves shall be so located, constructed, maintained and used as to avoid fire hazards and smoke nuisance, both on the property on which used and on neighboring property. No open fire shall be permitted except in facilities provided. No open fire shall be left unattended. No fuel shall be used and no material burned which emits dense smoke or objectionable odors. No refuse shall be burned at any time.

§ 97-17. Refuse.

- A. The storage, collection and disposal of refuse in the mobile home park shall be so conducted as to create no health hazards, rodent harborage, insect-breeding areas, accident or fire hazards or air pollution.
- B. All refuse shall be stored in fly-tight, watertight, rodent-proof containers, which shall be located not more than 150 feet from any mobile home lot. Containers shall be provided in sufficient number and capacity to properly store all refuse.
- C. Refuse collection stands shall be provided for all refuse containers. Such container stands shall be so designed as to prevent containers from being tipped, to minimize spillage and container deterioration and to facilitate cleaning around them.
- D. All refuse containing garbage shall be collected at least twice weekly. Where suitable collection service is not available from municipal or private agencies, the mobile home park operator shall provide this service. All

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refuse shall be collected and transported in covered vehicles or covered containers.

§ 97-19

- E. Where municipal or private disposal service is not available, the mobile home park operator shall dispose of the refuse by transporting it to the Town disposal site.
- F. Refuse incinerators shall be operated only when attended by some person specifically authorized by the owner or operator of the mobile home park.

§ 97-18. Insect and rodent control.

Insect and rodent control measures to safeguard public health, as recommended by the Erie County Health Department, shall be applied in the mobile home park.

§ 97-19. Fuel supply and storage.

A. Natural gas system.

- (1) Natural gas piping systems shall be installed and maintained in accordance with applicable codes and regulations governing such systems.
- (2) Each mobile home lot provided with piped gas shall have an approved manual shutoff valve installed upstream of the gas outlet. The outlet shall be equipped with an approved cap to prevent accidental discharge of gas when the outlet is not in use.

B. Liquefied petroleum gas systems.

- (1) Liquefied petroleum gas systems shall be installed and maintained in accordance with applicable codes and regulations governing such systems.
- (2) Systems shall be provided with safety devices to relieve excessive pressures and shall be arranged so that the discharge terminates at a safe location.
- (3) Systems shall have at least one accessible means for shutting off gas. Such means shall be located outside the mobile home and shall be maintained in effective operating condition.
- (4) All liquefied petroleum gas piping outside of the mobile homes shall be well supported and protected against mechanical injury. Undiluted liquefied petroleum gas in liquid form shall not be conveyed through piping equipment and systems in mobile homes.
- (5) Liquefied petroleum gas containers installed on a mobile home lot shall be securely but not permanently fastened to prevent accidental overturning. Such containers shall not be less than 12 nor more than 60 United States gallons' gross capacity.
- (6) No liquefied petroleum gas vessel shall be stored or located inside or beneath any storage cabinet, carport, mobile home or any other structure, unless such installations are approved by the health authority.

C. Fuel oil supply systems.

- (1) All fuel oil supply systems shall be installed and maintained in accordance with applicable codes and regulations governing such systems.
- (2) All piping from outside fuel storage tanks or cylinders to mobile homes shall be permanently installed and securely fastened in place.
- (3) All fuel oil storage tanks or cylinders shall be securely fastened in place and shall not be located inside or beneath any mobile home or less than five feet from any mobile home exit.

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(4) Storage tanks located in areas subject to traffic shall be protected against physical damage.

§ 97-21

§ 97-20. Fire protection.

- A. The mobile home shall be subject to fire prevention ordinances which may be adopted by the Town.⁴³
- B. Mobile home parks shall be kept free of litter, rubbish and other flammable materials.
- C. Portable fire extinguishers of a type approved by the fire prevention authority shall be kept in service buildings and at all other locations designated by such fire prevention authority and shall be maintained in good operating condition.
- D. Fire shall be made only in stoves, incinerators and other equipment intended for such purposes.

§ 97-21. Alterations and additions.

- A. It shall be unlawful to increase the living or storage space of any mobile home located in a mobile home park. This shall not preclude or prohibit the erection of a storage shed thereon, provided that a permit is secured therefor and provided that living space is not afforded in the storage shed. Awnings or canopies may be attached to mobile homes without securing permits therefor.
- B. The wheels of the mobile home shall not be removed except temporarily when necessary for repairs. Jacks or stabilizers may be placed under the frame of the mobile home to prevent movement on the springs while the mobile home is parked and occupied.

43. Editor's Note: See Ch. 79, Fire Prevention.

Chapter 100

ACREAGE LOT DEVELOPMENT

[HISTORY: Adopted by the Town Board of the Town of Elma 3-16-1994.⁴⁴ Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 52.

Subdivision of land — See Ch. 123.

Sewers — See Ch. 115.

Zoning — See Ch. 144.

44. Editor's Note: Former Ch. 100, Open Space Development, adopted 9-5-1990 by L.L. No. 1-1990, was repealed 3-16-1994 by L.L. No. 1-1994.

§ 100-1. Purpose.

- A. The purpose of this chapter is to protect and promote the health, safety and general welfare of the residents of the Town of Elma by allowing the development of land which does not percolate as required by the provisions of the Erie County Sanitary Code and Health Department and the Town of Elma Code by controlling the number of septic systems or leech fields of sand filters allowed on the land by increasing the size of a lot and requiring sufficient space between the applicable system and the side yard to help prevent discharge on a neighboring property in the event of failure. The chapter will also allow further development of land on existing road frontage beyond the four splits allowed in the code, regardless of whether the land will percolate in accordance with the requirements contained in Chapter 123, Subdivision of Land.
- B. This section may be read in conjunction with Town Law § 280-a and utilized in the discretion of the Town Board with respect to Town Law § 280-a development, but does not require minimum lot development of five-plus acres, and does not preclude consideration of different plans or sizes of lots pursuant to Town Law § 280-a; a development project will be considered and reviewed individually with respect to the health, safety and public welfare of the citizens of the Town.

§ 100-1

§ 100-2

§ 100-2. Lots of greater than five acres; systems in fill.

- A. Owners of real property desiring to sell or develop land which does not percolate in accordance with the code provisions and intend to and design a septic system in fill as defined by the Erie County Health Department may sell or develop a lot or lots of more than five acres, but shall first apply to the Building Inspector for approval. The Building Inspector shall refer the application, together with a survey of the lot or lots, to the Elma Planning Board.
- B. The Planning Board shall examine the application and proposal, including access, drainage, size and related matters, and approve or disapprove said application. Any approval shall require that the tile field of the septic system shall not be less than 75 feet from any lot line. If approved, the Board shall direct the applicant to record in the Erie County Clerk's office the restriction below which is pertinent to the application before the Board.
- C. The Planning Board shall recommend to the Town Board approval or disapproval of said lot or lots for the erection of one single-family dwelling or one two-family dwelling.
- D. If the Town Board approves said application, no building permit shall be issued until the Building Inspector has received from the Town Attorney written verification that the restriction required in Subsection F below is contained in a duly recorded deed. If the Town Board disapproves the application, no residence may be erected on any lot so disapproved with a system in fill.
- E. If transfers of real property involving a lot or lots of more than five acres each are recorded without the restriction required herein and the grantee applies for a building permit, the Building Inspector shall refer the application to the Planning Board to follow the procedure set forth in this section.
- F. The restriction required herein is as follows:
 - (1) One lot. The premises described herein shall contain only a one-family or two-family dwelling if permitted in the zone where such lot is located. No multiple dwellings shall be permitted on said premises. The restriction shall terminate when public sewers are available for said premises.
 - (2) More than one lot. The respective lots contained within the premises described herein, each of more than five acres, shall contain only a one-family or two-family dwelling, if permitted. No multiple dwelling shall be allowed on any of said lots. This restriction shall terminate when public sewers are available for said premises.

§ 100-2

§ 100-3. Lots beyond the four-split rule; systems not in fill or land that percolates. [Amended 4-20-1994]

§ 100-3

Any development or split beyond the Town's four-split rule contained in § 144-131 and as further defined in § 144-2, "plot," shall be as permitted herein and as may be permitted in other provisions of this Code. Up to one lot may be transferred by deed in any year and thereafter developed on existing road frontage in any plot as defined by §§ 144-2 and 144-131 with a minimum lot area of two acres, with a minimum frontage of 150 feet, with a minimum depth of 350 feet and with a minimum of 25 feet side setback from the tile, leech field or other allowable system, except a system in fill, to the property line. All other requirements and provisions as to zoning or otherwise contained in the code shall apply. Upon meeting the requirements hereinabove and any other requirements necessary as detailed in the code, the Building Inspector shall issue a building permit.

§ 100-3

§ 100-4

§ 100-4. Severability.

If any section, clause or provision of this chapter or the application thereof to any persons is adjudged invalid, the adjudication shall not affect other sections, clauses or provisions or the application thereof which can be sustained or given effect without the invalid section, clause or provision or application, and, to this end, the various sections, clauses or provisions of this chapter are declared to be severable.

Chapter 103

PARKS

§ 100-4

§ 100-4

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

GENERAL REFERENCES

Dogs — See Ch. 65.

ARTICLE I
Elma Park on Creek Road
[Adopted 6-15-1960]

§ 103-1. General regulations.

The following regulations shall apply to the Elma Park on Creek Road:

- A. The park may be used only by residents and property owners of the Town of Elma, their guests and invitees.
- B. Residents and taxpayers desiring to use park facilities must register with the Town Clerk of Elma and will be given a certificate or sticker to be affixed to a vehicle used by such applicant.
- C. The park may be used only between 9:00 a.m. and 10:00 p.m. unless special permission is granted by the Town Board of Elma.
- D. Groups desiring to reserve a portion of the park must receive permission from the Town Clerk, who shall grant such permission to recognized groups organized and existing in the Town of Elma, in the order in which applications are received.
- E. Persons and organizations using park premises must conduct themselves in a lawful and orderly manner. Persons engaging in unlawful and/or disorderly conduct or using offensive, obscene or profane language may be removed from the premises.
- F. Waste material, garbage and refuse must be neatly disposed of by all users.
- G. Failure to comply with these regulations may result in the offender or offenders being denied use of the premises.
- H. The Town of Elma assumes no responsibility for the conditions of the premises, nor for injury while said premises are used nor for loss by damage, theft or otherwise.
- I. Alcoholic beverages may not be consumed on Town park premises, except by persons using such premises pursuant to a shelter permit duly issued by the Town Clerk. **[Added 7-1-1985 by L.L. No. 3-1985]**

ARTICLE II
Additional Regulations
[Adopted 5-19-1971]

§ 103-2. Restrictions.

The following park regulations shall apply by order of the Town Board:

- A. No cars shall be allowed in the park, and no parking shall be allowed in any place but designated parking areas. There shall be no parking on the ball diamond.
- B. No motorcycles, minibikes or horses are allowed in the park.
- C. It is a violation to remove the sign posting these regulations.
- D. No firearms shall be allowed.
- E. No smoking or vaping shall be allowed. **[Added 12-19-2018]**

Chapter 105

PEDDLING AND SOLICITING

§ 103-2

§ 105-1

[HISTORY: Adopted by the Town Board of the Town of Elma 12-17-1997.⁴⁵ Amendments noted where applicable.]

§ 105-1. Purpose.

The purpose of this chapter shall be to improve and promote the health, safety and general welfare of the community and the preservation of property and protection of the property of the Town of Elma and its residents by declaring and enforcing certain regulations and restrictions pertaining to peddling and solicitation by making certain that any firm or person engaged in solicitation of business or performance of the same is registered with the Town of Elma. The Town of Elma, by registering these individuals does not approve, endorse or recommend any person, business or entity applying for this permit or any product being offered.

45. Editor's Note: This ordinance also provided that it shall take effect 12-17-1997.

§ 105-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CONTRACTOR — Any person, firm, partnership or corporation engaged in new construction, repair, altering or improving any property vacant or occupied.

PEDDLER — Any person who shall engage in peddling as hereinafter defined.

PEDDLING — The selling or offering for sale of any goods, wares or merchandise for immediate delivery, which the person selling or offering for sale carries with him in traveling or has in his possession or control, upon any of the streets, roads or highways or from house to house within the Town of Elma; provided, however, that the word "peddling" shall not apply:

- A. To the selling or offering for sale of bread or bakery products, milk or milk products, ice cream products, daily papers or any other person soliciting or selling recognized products with routes that have been heretofore regularly established within the Town of Elma.
- B. To the selling or offering for sale of insurance by insurance agents or brokers licensed under the insurance laws of the State of New York.

PERSON — Any natural person, association, partnership, firm or corporation.

REGISTERING — Providing the Town Clerk with the information necessary to obtain a permit but with no requirement to obtain a license. Registering with the Town Clerk is not approval by the Town Board of the goods or services offered.

SOLICITING — The seeking or taking of contracts or orders for any goods, wares or merchandise for future delivery, or for subscriptions or contributions, upon any of the streets, roads or highways or from house to house within the Town of Elma. The word "soliciting" shall not apply to the exemptions as outlined in this chapter.

TRANSIENT RETAIL BUSINESS — A retail or wholesale business conducted in a temporary structure or tent; from a truck, van or trailer; on a parking lot or vacant parcel of land; on a part of public right-of-way; or in any other place for a temporary period of time. Lack of a rental or leasing agreement of three months or more in duration, sealed by monetary consideration, shall be presumptive of a temporary situation. The type of merchandise being offered for sale will have no bearing on the designation.

§ 105-2

§ 105-3

§ 105-3. Registration and permit requirements.

- A. No person shall engage in soliciting or peddling, contracting or as a transient retail business within the Town of Elma without first procuring a permit from the Town Clerk.
- B. Any person, firm, corporation, partnership or organization as defined § 105-2, Definitions, who wishes to conduct business to receive remuneration not exempted under this chapter shall register with the Town Clerk of the Town of Elma.
- C. No permit shall be issued until an application has first been filed with the Town Clerk by the person seeking the permit.
 - (1) The application shall require the applicant to set forth his name; address; sex; date of birth; previous criminal record, if any; the name, address and phone number of the person for whom he works, if any; the type or types of article, device, subscription, contribution, service or contract which he desires to sell or for which he wishes the permit to be issued, not exceeding 60 days; the type of vehicle he uses, if any; and its registration and license number. Such application shall be referred to the Building Department of the Town of Elma for review and approval, and after such approval has been received, the applicant shall be eligible for the issuance of such permit. Insurance forms shall be completed and attached. Contractor's registration shall be one calendar year.
 - (2) If the applicant is a corporation, the application shall include the name, address and phone numbers of the officers of the corporation, including one person from the corporation that may be contacted 24 hours a day.
 - (3) Where a person makes this application for himself and one or more helpers, all applicable personal information specified above shall be required to be given for each helper, and an individual permit shall be required and issued to each helper. No permit issued under this chapter shall be transferable from one person to another.
 - (4) Each applicant must provide satisfactory evidence that employees of the applicant are covered by worker's compensation, if necessary, and public liability insurance, if necessary, with limits of at least \$100,000 per person and \$300,000 for each bodily injury accident occurrence and a minimum of \$50,000 for property damage liability. The applicant shall be responsible for furnishing the Town of Elma with copies of current certificates of insurance demonstrating that the applicant has appropriate insurance coverage in place.
- D. Subcontractors working for a general contractor on a site are exempt on that site only. Registration cards are not transferable.

§ 105-3

§ 105-4

§ 105-4. Compliance with other laws required.

It shall be the duty of all contractors, solicitors, peddlers and transient retail businesses to comply with all applicable state laws, including Article 36-A of the State General Business Law, state codes, local laws and/or ordinances relating to the various activities engaged in by the contractor.

§ 105-5. Offenses enumerated.

- A. Entering a private residence or place of business in the Town of Elma by a solicitor or peddler, as defined herein, for the purpose of selling or offering for sale or for soliciting orders for goods, wares, merchandise, contracts or personal services, or remaining in a private residence or the premises thereof, or any place of business or on the premises thereof, after the owner or occupant thereof shall have requested any solicitor or peddler to leave, or going in and upon the premises of a private residence or place of business by a solicitor or peddler, as defined herein, for any such purposes when the owner or occupant has displayed a "no soliciting" sign on such premises, is prohibited and declared to be an offense.
- B. It shall also be an offense for failure to register in compliance with this chapter.

§ 105-5

§ 105-6

§ 105-6. Penalties for offenses.

Any person, firm, partnership, corporation or any other entity violating any of the provisions of this chapter shall be subject to a fine of not more than \$250 for each violation or to imprisonment for a period not exceeding 15 days for each such violation, or to both such fine and imprisonment, except when a punishment is expressly prescribed in such provisions. Unless otherwise provided, each day and each home or business solicited on which a violation occurs shall be considered and/or deemed a separate violation for purposes of this chapter.

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§ 105-7

§ 105-7. Permit to be carried at all times.

Each person licensed under the provisions of this chapter shall keep with him the permit issued by the Town Clerk at all times he is engaged in his business and upon demand of any police officer or other lawful authority or of any person being solicited by the permittee to produce the permit issued to him.

§ 105-7

§ 105-8

§ 105-8. Revocation of permit.

Any permit issued pursuant to this chapter may be revoked by the Town Clerk upon the order of the Town Board for proper cause and in the interest of public safety.

§ 105-8

§ 105-9

§ 105-9. Issuance of permit; conditions.

Each solicitor, peddler, contractor or transient retail business shall be issued a permit unless he shall have been convicted of a crime involving moral turpitude or engaged in a business not permitted by law. This permit shall be valid on weekdays between the hours of 9:00 a.m. and 5:00 p.m. from the date of issuance for a period of 60 days thereafter, in the case of a solicitor, peddler or transient retail business, or one year in the case of a contractor, which permit shall not be transferable, but shall be revocable in the event of violation of the terms and conditions thereof.

§ 105-9

§ 105-10

§ 105-10. Records of registration, supervision.

The Town Clerk of the Town of Elma shall keep a record of all registrations to whom permits have been issued under this chapter, and the Building Inspector and law enforcement agencies in the Town of Elma, as well as Special Police of the Town of Elma, shall supervise the activities of all the holders of such permits.

§ 105-11. Exemptions.

Exemptions are as follows:

- A. Notwithstanding any of the provisions herein contained, any person, corporation, partnership or association engaged in charitable, benevolent, patriotic, religious or school purposes native to the Town, or engaged in selling produce or products raised in the Town of Elma which are offered for sale, who are soliciting shall be permitted to obtain a permit for compliance with the regulations hereof, without payment of any fee thereof.
- B. Persons under the age of 19 years shall not be required to register and obtain a permit as heretofore provided for if they are soliciting for any purpose directly connected with a religious, charitable, benevolent, school or service organization native to the Town of Elma.
- C. Farmers. The peddling of meats, fish, fruit and farm produce by farmers and persons who produce such commodities.
- D. Charitable organizations. Bona fide not-for-profit organizations or bona fide professional fund-raisers duly registered pursuant to Article 10-A of the Social Welfare Law⁴⁶ of the State of New York or persons specifically exempted from the provisions of said Article 10-A of the Social Welfare Law pursuant to § 482-a⁴⁷ thereof.
- E. Veterans and widows of veterans. An honorably discharged member of the Armed Forces of the United States who is a resident of the County of Erie, State of New York, and a veteran of any war, or who, being a resident of the County of Erie and State of New York, shall have served in the Armed Forces overseas, and the widow of any such veteran, if she is a resident of the County of Erie and State of New York, shall have the right to hawk, peddle, vend and sell goods, wares or merchandise or solicit trade upon the streets and highways within the Town of Elma, provided that said person complies with § 32 of the General Business Law of the State of New York.
- F. Local civil, educational or similar groups. Solicitation for contributions or subscriptions sponsored by local civic, educational or political or governmental groups, provided that the organization has registered with the Town Clerk. No fee shall be required for these organizations.
- G. Sales conducted pursuant to statute.
- H. Sales conducted pursuant to the order of any court.
- I. Any person selling personal property at wholesale to dealers in such articles.
- J. The sale of fruit and vegetables raised on the property where being sold.
- K. Any honorably discharged member of the United States Armed Forces who has procured a license under Article 4 of the General Business Law of the State of New York.
- L. Persons soliciting, collecting or operating a sale on behalf of any bona fide charitable educational, scientific, health, religious, patriotic or other organization of worthy cause deemed to be in the public interest.
- M. Any person selling personal property at a garage sale held at his residence.

46. Editor's Note: Former Art. 10-A was repealed by Chapter 669 of the Laws of 1977. See now Executive Law Art. 7-A.

47. Editor's Note: Former § 482-a was repealed by Chapter 669 of the Laws of 1977. See now Executive Law § 172-a.

§ 105-11

§ 105-12

§ 105-12. Fees.

No permit shall be issued under this chapter until the proper fee shall be paid to the Town Clerk in the sum of \$25 per person for solicitation and peddling. The permit fee for contractors shall be the sum of \$25 per person or corporation. The renewal fee shall be \$10.

Chapter 115

SEWERS

[HISTORY: Adopted by the Town Board of the Town of Elma 8-17-2005.⁴⁸ Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 52.

Stormwater management — See Ch. 120.

Cross-connection control — See Ch. 59B.

Stormwater Management Overlay District — See Ch. 120.

Excavations — See Ch. 75.

Water — See Ch. 140.

Filling and grading — See Ch. 77.

Zoning — See Ch. 144.

Mobile home parks — See Ch. 97.

48. Editor's Note: This ordinance repealed former Ch. 115, Sewers, adopted 4-16-1969 by Ord. No. 12, as amended.

ARTICLE I
Short Title and Purpose

§ 115-1. Short title.

For brevity and ease of communication, this chapter may be cited as the "Town of Elma Sewer Use Law."

§ 115-2. General purpose.

The general purpose of this chapter is the following: to provide for efficient, economic, environmentally safe, and legal operation of the Town of Elma POTW.

§ 115-3. Specific purposes.

The specific purposes of this chapter are the following:

- A. To prevent the introduction of substances into the POTW that will:
 - (1) Interfere with the POTW in any way;
 - (2) Pass through the POTW to the state's waters and cause contravention of standards for those waters or cause violation of the POTW's SPDES permit;
 - (3) Increase the cost or otherwise hamper the disposal of POTW sludge and/or residuals;
 - (4) Endanger municipal employees;
 - (5) Cause air pollution or groundwater pollution, directly or indirectly; and
 - (6) Cause, directly or indirectly, any public nuisance condition.
- B. To prevent new sources of infiltration and inflow and, as much as possible, eliminate existing sources of infiltration and inflow.
- C. To assure that new sewers and connections are properly constructed.
- D. To provide for equitable distribution to all users of the POTW of all costs, associated with sewage transmission, treatment, and residuals disposal, and to provide for the collection of such costs.

§ 115-4. Replacement of previous Sewer Use Law.

The provisions in the existing Town of Elmo Code entitled "Sewers" are hereby repealed, and said provisions are replaced by the herein set forth Articles I through XIV inclusive.

ARTICLE II Terminology

§ 115-5. Word usage.

Unless otherwise stated in the section where the term is used in this chapter, the meaning of terms used in this chapter shall be as stated below. When not inconsistent with the context, the present tense shall include the future, and words used in the plural shall include the singular and vice versa. Furthermore, a masculine pronoun shall include the feminine. Shall is mandatory; may is permissive.

303(d) LIST — A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by contaminants, prepared periodically by NYSDEC as required by Section 303(d) of the Act, 303(d) listed waters are estuaries, lakes and streams that fall short of state surface water quality standards and are not expected to improve within the next two years. **[Added 12-19-2007 by L.L. No. 3-2007]**

ABNORMAL SEWAGE — Sewage whose concentration of one or more characteristics of normal sewage exceeds the maximum concentrations of the characteristics of normal sewage. See "normal sewage."

ACT or THE ACT — The Federal Water Pollution Control Act, also known as the "Clean Water Act," as amended, 33 U.S.C. 1251 et seq., as may be amended.

ADMINISTRATOR — The Regional Administrator of the U.S. Environmental Protection Agency (USEPA), Region 2.

AMMONIA — The result obtained using an approved laboratory procedure to determine the quantity of ammonia in a sample, expressed as milligrams of nitrogen per liter.

APPLICANT — That person who makes application for any permit. The applicant may be an owner, new or old, or his agent.

APPROVAL AUTHORITY — The USEPA, or the New York State Department of Environmental Conservation (NYSDEC), in the event the NYSDEC is delegated approval authority responsibility by the USEPA.

APPROVED LABORATORY PROCEDURE — The procedures defined as "standard methods" in this article, or other procedures approved by the Superintendent, for flow measurement or determination of the concentration of pollutants or their surrogates in waters, wastewaters, and/or sludges.

ASTM (AMERICAN SOCIETY FOR TESTING AND MATERIALS) — The latest edition of any ASTM specification, when stipulated in this chapter.

AUTHORIZED REPRESENTATIVE OF THE INDUSTRIAL USER — An authorized representative of the industrial user may be:

- A. A principal executive officer of at least the level of vice president, if the industrial user is a corporation;
- B. A general partner or proprietor, if the industrial user is a partnership or proprietorship, respectively;
- C. A duly authorized representative of the individual designated above, if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.

BEST MANAGEMENT PRACTICES — Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures and other management practices to prevent or reduce the discharge of contaminants directly or indirectly to stormwater receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. **[Added 12-19-2007 by L.L. No. 3-2007]**

BOD (BIOCHEMICAL OXYGEN DEMAND) — The result obtained when using an approved laboratory procedure to determine the quantity of oxygen utilized in the aerobic biochemical oxidation of organic matter or in

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a sample, expressed in milligrams per liter.

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BUILDER — Any person who undertakes to construct a building or any part of a building, either under contract or for resale.

BUILDING DRAIN — That part of the lowest horizontal piping of a building drainage system which receives the discharge from soil, waste, and other drainage pipes inside the building walls, and conveys it to the building lateral, which begins five feet outside the inner face of the building wall.

CHLORINE DEMAND — The result obtained when using an approved laboratory procedure to determine the difference between the amount of chlorine added to a sample and the amount of chlorine remaining in the sample at the end of a specified contact time at room temperature, expressed in milligrams per liter.

COD (CHEMICAL OXYGEN DEMAND) — The result obtained when using an approved laboratory procedure to measure the oxygen requirement of that portion of matter, in a sample, that is susceptible to oxidation, by a specific chemical oxidant, expressed in milligrams per liter.

CODE ENFORCEMENT OFFICER — An employee or officer of the Town of Elma appointed by the Town Board to enforce the provisions of this article. The CEO shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel.**[Added 12-19-2007 by L.L. No. 3-2007]**

COLOR — The optical density at the visual wavelength of maximum absorption relative to distilled water. One-hundred-percent transmittance is equivalent to 0.0 optical density.

COMPOSITE SAMPLE — The sample resulting from the combination of individual samples of wastewater taken at selected intervals, for a specified time period. The individual samples may have equal volumes or the individual volumes may be proportioned to the flow at the time of sampling.

CONNECTION — Attachment of one user to a sewer. See "extension."

CONNECTION CHARGE (TAP FEE) — The one-time application fee to offset Town of Elma expenses to process an application for a connection of a building/street lateral to the public sewer. The fee also covers plan review, permit issuance, street repair cost, and inspection costs. The fee may be scaled to the amount of work involved, or to the size of the public sewer involved.

CONSTRUCTION ACTIVITY — Any activity requiring authorization under the SPDES General Permit for Stormwater Discharges from Construction Activity, Permit No. GP-02-01 as amended or revised, including construction projects resulting in land disturbance of one or more acres. Construction activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.**[Added 12-19-2007 by L.L. No. 3-2007]**

CONTAMINANT — Dredged spoil, filter backwash solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials radioactive materials, heat wrecked or discarded equipment, rock, sand and industrial, municipal, and agricultural waste and ballast discharged into water, any of which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of water quality standards.**[Added 12-19-2007 by L.L. No. 3-2007]**

CONTAMINATED WATER — Water that is not stormwater is contaminated with contaminants and has been or will be discarded.**[Added 12-19-2007 by L.L. No. 3-2007]**

CONTROL AUTHORITY — The term shall refer to "approval authority," or to the Superintendent when the Town of Elma has an approved pretreatment program under the provisions of 40 CFR 403.11.

CONTROL MANHOLE — A manhole accessible to the control authority in or upstream of the street lateral, such that samples collected from the manhole represent the discharge to the POTW.

CONVENTIONAL POLLUTANT — A pollutant that the POTW treatment plant was designed to treat, defined in accordance with the Act.

COOLING WATER — The water discharged from any system of condensation, air conditioning, refrigeration, or other sources. It shall contain no polluting substances which would produce COD or suspended solids in excess of

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five milligrams per liter, or toxic substances, as limited elsewhere in this chapter.

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COUNTY — The county in which the Town of Elma is located.

DEVELOPER — Any person who subdivides land for the purpose of constructing, or causing to be constructed, buildings for which wastewater disposal facilities are required.

DIRECT DISCHARGE — The discharge of treated or untreated wastewater directly to the waters of the State of New York. (For reference, see "indirect discharge.")

DOMESTIC WASTES — See "sewage, domestic."

DRY SEWERS — The sanitary sewer installed in anticipation of future connection to a POTW but which is not used, in the meantime, for transport of storm or sanitary sewage.

EASEMENT — An acquired legal right for the specific use of land owned by others.

END OF PIPE — For the purpose of determining compliance with limitations prescribed by Article IX, "end of pipe" shall mean the control manhole, provided the samples collected from the control manhole are representative of the discharge to the POTW.

END OF PIPE CONCENTRATION — The concentration of a substance in a sample of wastewater at end of pipe.

END OF PROCESS CONCENTRATION — See "National Categorical Pretreatment Standard."

EPA, USEPA or U.S. ENVIRONMENTAL PROTECTION AGENCY — The agency of the federal government charged with the administration and enforcement of federal environmental laws, rules, and regulations. Also may be used as a designation for the Administrator or other duly authorized official of this agency.

EXTENSION — Attachment of a sewer line, with more than one user, to an existing sewer line.

FACILITY — All buildings, other structures, grounds and contiguous property at any locations related to or connected with a user at the user's location.

FLOATABLE OIL — Oil, grease, or fat in a physical state such that it will separate by gravity from wastewater by treatment in a wastewater treatment facility.

FLOW RATE — The quantity of liquid or waste that flows in a certain period of time.

GARBAGE — The solid wastes from the preparation, cooking, and dispensing of food, from the handling, storage, and sale of produce, and from the packaging and canning of food.

GRAB SAMPLE — A single sample of wastewater representing the physical, chemical, and biological characteristics of the wastewater at one point and time.

HAZARDOUS MATERIALS — Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health safety, property, or the environment when improperly treated, stored, transported disposed of, or otherwise managed.**[Added 12-19-2007 by L.L. No. 3-2007]**

ICS FORM — The form used by the NYSDEC to survey industries to perform and update the Industrial Chemical Survey.

ILLICIT CONNECTION — Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4, including but not limited to:**[Added 12-19-2007 by L.L. No. 3-2007]**

- A. Any conveyance which allows any nonstormwater discharge, including treated or untreated sewage, process contaminated water, and wash water to enter the MS4 and any connection to the storm sewer system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
- B. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been

§ 115-5 documented in plans, maps, or equivalent records and approved by an authorized enforcement agency. § 115-5

ILLICIT DISCHARGE — Any direct or indirect nonstormwater discharge to the MS4, except as exempted in § 115-167.[Added 12-19-2007 by L.L. No. 3-2007]

INDIRECT DISCHARGE — The introduction of wastewater into a POTW for treatment and ultimate discharge of the treated effluent to the state's waters. (For reference, see "direct discharge.")

INDUSTRIAL — Meaning or pertaining to industry, manufacturing, commerce, trade, business, or institution, and is distinguished from domestic or residential.

INDUSTRIAL ACTIVITY — Activities requiring the SPDES Multisector General Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. GP-0-06-002, as amended or revised.[Added 12-19-2007 by L.L. No. 3-2007]

INDUSTRIAL CHEMICAL SURVEY (ICS) — The survey of industries in New York State, initiated by the NYSDEC, to determine chemical usage and storage by those industries.

INDUSTRIAL USER — See "user, industrial."

INDUSTRIAL WASTES — The liquid or liquid-carried solid, liquid and/or gaseous wastes from industrial manufacturing processes, trade, service, utility, or business, as distinct from sanitary sewage.

INFILTRATION — Water, other than wastewater, that enters a sewer system (excluding building drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow. Infiltration is inadvertent, that is, not purposely designed or built into the sewer or drain.

INFLOW — Water, other than wastewater, that enters a sewer system (including building drains) from sources such as, but not limited to, roof leaders, cellar drains, area drains, drains from springs and swampy areas, manhole covers, cross-connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwaters, foundation drains, swimming pools, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration. Inflow is purposely designed and/or built into the sewer or drain.

INTERFERENCE — A discharge which, alone or in conjunction with discharges by other sources:

- A. Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- B. Therefore is a cause of a violation of any requirement of the (C, V, T) POTW's SPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal by the POTW in accordance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations):
 - (1) Section 405 of the Clean Water Act;
 - (2) SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act — nservation and Recovery Act - RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D or the SWDA;
 - (3) Clean Air Act;
 - (4) Toxic Substance Control Act; and
 - (5) Marine Protection Research and Sanctuaries Act.

LATERAL, BUILDING — The sewer extension from the building drain to the street lateral or other place of wastewater disposal.

LATERAL, STREET — The sewer extension from the public sewer to the property line.

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MUNICIPAL SEPARATE STORM SEWER SYSTEM — A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm sewers):[Added 12-19-2007 by L.L. No. 3-2007] § 115-5

- A. Owned or operated by the Town of Elma;
- B. Designed or used for collecting or conveying stormwater;
- C. Which is not a combined sewer; and
- D. Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR § 122.2.

NATIONAL CATEGORICAL PRETREATMENT STANDARD or CATEGORICAL STANDARD — Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(B) and (C) of the Act (22 U.S.C. 1347), which applies to a specific category of industrial users. These standards apply at the end of the categorical process ("end of process").

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT — A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

NATIONAL PROHIBITIVE DISCHARGE STANDARD or PROHIBITIVE DISCHARGE STANDARD — Any regulation developed under the authority of Section 307(B) of the Act and 40 CFR Section 403.5.

NATURAL OUTLET — Any outlet, including storm sewers and combined sewer overflows, to state's waters.

NEW OWNER — That individual or entity who purchased property within the service area of the Town of Elma after the effective date of this chapter.

NEW SOURCE — Any source, the construction of which is commenced after the publication of the proposed regulation prescribing a Section 307(C) (33 U.S.C. 1317) categorical pretreatment standard which will be applicable to such source, if such standard is thereafter promulgated.

NEW USER — A discharger to the POTW who commences discharge after the effective date of this chapter.

NONSTORMWATER DISCHARGE — Any discharge to the MS4 that is not composed entirely of stormwater.[Added 12-19-2007 by L.L. No. 3-2007]

NORMAL SEWAGE — See "sewage, normal."

NUISANCE — The use or lack of use of the POTW in such a manner so as to endanger life or health, give offense to the senses, or obstruct or otherwise interfere with the reasonable use or maintenance of the POTW.

OIL AND GREASE — The result obtained when using an approved laboratory procedure to determine the quantity of fats, wax, grease, and oil, in a sample, expressed in milligrams per liter.

OLD OWNER — That individual or entity who owns or owned a property, within the service area of the POTW, purchased prior to the effective date of this chapter, or who inherited the property at any time and intends to sell the property, or has sold the property to a new owner, also the agent of the old owner.

OTHER WASTES — Garbage (shredded or unshredded), refuse, wood, egg shells, coffee grounds, sawdust, shavings, bark, sand, lime, ashes, and all other discarded matter not normally present in sewage or industrial wastes. Also, the discarded matter not normally present in sewage or industrial waste.

PASS-THROUGH — The discharge which exits the Town of Elma POTW into waters of the state in quantities, which, alone or in conjunction with discharges from other sources, is a cause of a violation of any requirement of the POTW's SPDES permit (including an increase in the magnitude or duration of a violation).

PERMIT — A temporary revocable written document allowing use of the POTW for specified wastes over a limited period of time, containing sampling locations and reporting frequencies, and requiring other actions as authorized by this chapter.

PERSON — Any individual, public or private corporation, political subdivision, federal, state, or local agency or

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entity, association, trust, estate or any other legal entity whatsoever.

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pH — The logarithm (base 10) of the reciprocal of the weight of hydrogen ions, in gram moles per liter of solution. A pH value of 7.0, the pH scale midpoint, represents neutrality. Values above 7.0 represent alkaline conditions. Values below 7.0 represent acid conditions.

PHOSPHORUS, TOTAL — See "total phosphorus."

POLLUTANT — Any material placed into or onto the state's waters, lands and/or airs, which interferes with the beneficial use of that water, land and/or air by any living thing at any time.

POLLUTION — The man-made or man-induced alteration of the chemical, physical, biological, and/or radiological integrity of the state's waters, lands and/or airs resulting from the introduction of a pollutant into these media.

POLLUTANT OF CONCERN — A sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other contaminant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity. **[Added 12-19-2007 by L.L. No. 3-2007]**

POTW TREATMENT PLANT — That portion of the POTW designed to provide treatment to wastewater, and to treat sludge and residuals derived from such treatment.

PREMISES — Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips. **[Added 12-19-2007 by L.L. No. 3-2007]**

PRETREATMENT (TREATMENT) — The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be achieved by physical, chemical, or biological process, process changes, or by other means, except as prohibited by 40 CFR § 403.6(D).

PRETREATMENT REQUIREMENTS — Any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard imposed on an industrial user.

PRETREATMENT STANDARD or NATIONAL PRETREATMENT STANDARD — Any categorical standard or prohibitive discharge standard.

PRIORITY POLLUTANTS — The most recently revised or updated list, developed by the EPA, in accordance with the Act.

PROHIBITIVE DISCHARGE STANDARD — See "National Prohibitive Discharge Standard."

PROPERLY SHREDDED GARBAGE — The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, and with no particle having a dimension greater than 1/2 inch in any dimension.

PUBLICLY OWNED TREATMENT WORKS (POTW) — A treatment works, as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned, in this instance, by the Town of Elma. This definition includes any sewers and appurtenances that transport wastewater to the POTW treatment plant, but does not include, pipes, sewers, or other conveyances not connected directly or indirectly to a facility providing treatment.

RECEIVING WATERS — A natural watercourse or body of water (usually waters of the state) into which treated or untreated sewage is discharged.

RECORDS — Includes but is not be limited to any printed, typewritten, handwritten or otherwise recorded matter of whatever character (including paper or electronic media), including but not limited to letters, files, memoranda, directives, notes and notebooks, correspondence, descriptions, telephone call slips, photographs, permits, applications, reports, compilations, films, graphs and inspection reports. For the purposes of this chapter, "records" shall mean records of and relating to waste generation, reuse and disposal, and shall include records of usage of raw materials.

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ROOF DRAIN — A drain installed to receive water collecting on the surface of a roof for disposal.

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SEPTAGE — All liquids and solids in and removed from septic tanks, holding tanks, cesspools, or approved type of chemical toilets, including but not limited to those serving private residences, commercial establishments, institutions, and industries. Also sludge from small sewage treatment plants. Septage shall not have been contaminated with substances of concern or priority pollutants.

SEPTIC TANK — A private domestic sewage treatment system consisting of an underground tank (with suitable baffling), constructed in accordance with any and/or all local and state requirements.

SERVICE AREA OF THE POTW — The legally defined bounds of real property from which wastewater may be discharged into the POTW. The bounds shall be established, altered, changed, modified, reduced, enlarged, combined, or consolidated by action of the Town of Elma Board.

SEWAGE — A combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, and such groundwater, surface water, and stormwater as may be inadvertently present. The admixture of sewage, as defined above, with industrial wastes and other wastes shall also be considered sewage, within the meaning of this definition.

SEWAGE, DOMESTIC (DOMESTIC WASTES) — Liquid wastes from the noncommercial preparation, cooking, and handling of food, liquid wastes containing human excrement and similar matter from the sanitary conveniences in dwellings, commercial buildings, industrial buildings, and institutions, or liquid wastes from clothes washing and/or floor/wall washing. Therefore, domestic sewage includes both black water and grey water. (See "sewage, sanitary.")

SEWAGE, NORMAL —

A. Sewage, industrial wastes, or other wastes, which show, by analysis, the following characteristics:

- (1) BOD (five day) — 2,090 pounds per million gallons (250 milligrams per liter), or less.
- (2) Suspended solids - 2,500 pounds per million gallons (300 milligrams per liter), or less.
- (3) Phosphorus - 125 pounds per million gallons (15 milligrams per liter), or less.
- (4) Ammonia - 250 pounds per million gallons (30 milligrams per liter), or less.
- (5) Total Kjeldahl Nitrogen - 417 pounds per million gallons (50 milligrams per liter), or less.
- (6) Chlorine demand - 209 pounds per million gallons (25 milligrams per liter), or less.
- (7) Chemical oxygen demand - 2,920 pounds per million gallons (350 milligrams per liter), or less.
- (8) Oil and grease - 830 pounds per million gallons (100 milligrams per liter), or less.

B. In spite of satisfying one or more of these characteristics, if the sewage also contains substances of concern, it may not be considered normal sewage.

SEWAGE, SANITARY — Liquid wastes from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, or institutions, and free from stormwater, surface water, industrial, and other wastes. (See "domestic wastes.")

SEWAGE TREATMENT PLANT (WATER POLLUTION CONTROL PLANT) — See "POTW Treatment Plant."

SEWAGE, UNUSUAL STRENGTH OR CHARACTER — Sewage which has characteristics greater than those of normal sewage and/or which contains substances of concern.

SEWER — A pipe or conduit for carrying or transporting sewage.

SEWER, COMBINED — A sewer designed to receive and transport both surface runoff and sewage.

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SEWER, PUBLIC — A sewer in which all abutting property owners have equal rights, and the use of which is controlled by the Town of Elma.

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SEWER, SANITARY — A sewer which carries sewage, and to which stormwater, surface water, and groundwaters are not intentionally admitted.

SEWER, STORM (STORM DRAIN) — A sewer which carries stormwater and surface waters and drainage, but excludes sewage and industrial wastewaters, other than cooling waters and other unpolluted waters.

SEWERAGE SURCHARGE — The demand payment for the use of a public sewer and/or sewage treatment plant for the handling of any sewage, industrial wastes, or other wastes accepted for admission thereto in which the characteristics thereof exceed the maximum values of such characteristics in normal sewage. (See "volume charge.")

SEWERAGE SYSTEM (ALSO POTW) — All facilities for collecting, regulating, pumping, and transporting wastewater to and away from the POTW treatment plant.

SIGNIFICANT INDUSTRIAL USER — See "user, significant industrial."

SIGNIFICANT NONCOMPLIANCE (SNC) — A user is in significant noncompliance if its violation(s) meet(s) one or more of the following criteria:

- A. Chronic violations of wastewater discharge limits, defined here as those, in 66% or more of all of the measurements taken during a six-month period, which exceed (by any magnitude) the daily maximum limit or average limit for the same pollutant parameter;
- B. Technical review criteria (TRC) violations, defined here as those, in which 33% or more of all of the measurements for each pollutant parameter taken during a six-month period, which equal or exceed the product of the daily maximum limits multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease; TRC = 1.2 for all other pollutants);
- C. Any other violation of a pretreatment effluent limit (daily maximum or long-term average) that the Superintendent determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public);
- D. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Superintendent's exercise of its emergency authority under Article XI of this chapter;
- E. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- F. Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- G. Failure to report accurately any noncompliance;
- H. Any other violation which the Superintendent determines will adversely affect the implementation or operation of the local pretreatment program.

SLUG — A substantial deviation from normal rates of discharge or constituent concentration (see "normal sewage") sufficient to cause interference. In any event, a discharge which, in concentration of any constituent or in quantity of flow, that exceeds, for any period of duration longer than 15 minutes, more than five times the average twenty-four-hour concentration or flow during normal user operations, shall constitute a slug.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MS4s, PERMIT NO GP-02-02 — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities

§ 115-5 to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards, as amended or revised.[Added 12-19-2007 by L.L. No. 3-2007]

SPECIAL CONDITIONS — [Added 12-19-2007 by L.L. No. 3-2007]

- A. Discharge compliance with water quality standards: the condition that applies where the Town has been notified that the discharge of stormwater authorized under their MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition, the Town must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.
- B. 303(d) listed waters: the condition in the Town's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition, the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.
- C. Total maximum daily load (TMDL) strategy: the condition in the Town's MS4 permit where a TMDL, including requirements for control of stormwater discharges, has been approved by EPA for a water body or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the Town was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.
- D. The condition in the Town's MS4 permit that applies if a TMDL is approved in the future by EPA for any water body or watershed into which an MS4 discharges. Under this condition, the Town must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the Town must, within six months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

STANDARD INDUSTRIAL CLASSIFICATION (SIC) — A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, and subsequent revisions.

STANDARD METHODS — Procedures contained in the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, procedures established by the Administrator, pursuant to Section 304(G) of the Act and contained in 40 CFR, Part 136, and amendments thereto (if 40 CFR, Part 136 does not include a sampling or analytical technique for the pollutant in question, then procedures set forth in EPA publication, "Sampling and Analysis Procedures for Screening of industrial Effluents for Priority Pollutants," April 1977, and amendments thereto, shall be used), any other procedure approved by the Administrator, or any other procedure approved by the Superintendent, whichever is the most conservative.

STATE — State of New York.

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER DISCHARGE PERMIT — A permit issued by NYSDEC that authorizes the discharge of contaminants to waters of the state.[Added 12-19-2007 by L.L. No. 3-2007]

STATE'S WATERS — See "waters of the state."

STORMWATER — Rainwater, surface runoff, snowmelt and drainage.[Amended 12-19-2007 by L.L. No. 3-2007]

STORMWATER MANAGEMENT OVERLAY DISTRICT — The overlay district created by the Town of Elma by local law⁴⁹ and consisting of all urbanized areas within the jurisdiction of the Town of Elma, as identified by the United States Census Bureau TIGER data, 2000 Census, in two maps, attached hereto, entitled the "Buffalo NY Urbanized Area Stormwater Entities as Defined by the 2000 Census," dated October 21, 2002, as amended,

49. Editor's Note: See Ch. 120A, Stormwater Management Overlay District.

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revised, replaced. **[Added 12-19-2007 by L.L. No. 3-2007]**

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SUBSTANCES OF CONCERN — Those compounds which the New York State Department of Environmental Conservation has determined may be harmful to man or the environment.

SUMP PUMP — A mechanism used for removing water from a sump or wet well.

SUPERINTENDENT — That individual nominated by the Town of Elma Supervisor and confirmed by the Town of Elma Board as the Superintendent of Water and Wastewater. Such an individual shall be licensed to practice engineering in the state, and otherwise qualified to oversee water treatment and distribution and POTW operations. This definition shall also include his authorized deputy, agent, or representative.

SUSPENDED SOLIDS — The result obtained, using an approved laboratory procedure, to determine the dry weight of solids, in a sample, that either float on the surface of, or are in suspension, or are settleable, and can be removed from the sample by filtration, expressed in milligrams per liter.

TOTAL KJELDAHL NITROGEN (TKN) — The result obtained, using an approved laboratory procedure, to determine the quantity of ammonia in a sample and released during the acid digestion of organic nitrogen compounds, expressed as milligrams of nitrogen per liter.

TOTAL MAXIMUM DAILY LOAD — The maximum amount of a contaminant to be allowed to be released into a water body so as not to impair uses of the water, allocated among the sources of that contaminant. **[Added 12-19-2007 by L.L. No. 3-2007]**

TOTAL PHOSPHORUS — The result obtained, using an approved laboratory procedure, to determine the total quantity of orthophosphate, in a sample of wastewater, following the hydrolysis of phosphorus compounds, expressed as milligrams of phosphorus per liter of sample.

TOWN — The Town of Elma, as incorporated in 1857.

TOWN BOARD — The Town Board of the Town of Elma, Erie County, New York. **[Added 12-19-2007 by L.L. No. 3-2007]**

TOXIC SUBSTANCES — Any substance, whether gaseous, liquid, or solid, that when discharged to a public sewer in sufficient quantities may be hazardous to POTW operation and maintenance personnel, tend to interfere with any biological sewage treatment process, or to constitute a hazard to recreation in the receiving waters, due to the effluent from a sewage treatment plant or overflow point. Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the EPA under provisions of CWA 307(A) or other Acts.

USER — Any person who contributes, causes, or permits the contribution of wastewater into the POTW.

USER, EXISTING — A discharger to the POTW who is discharging on or before the effective date of this chapter.

USER, INDUSTRIAL — A discharger to the POTW who discharges nondomestic wastewaters.

USER, NEW — A discharger to the POTW who initiates discharge after the effective date of this chapter.

USER, SIGNIFICANT INDUSTRIAL (SIU) — An industrial user of the Town of Elma POTW who is:

- A. Subject to National Categorical Pretreatment Standards promulgated by the EPA;
- B. Having substantial impact, either singly or in combination with other industries, on the operation of the treatment works;
- C. Using, on an annual basis, more than 10,000 pounds or 1,000 gallons of raw material containing priority pollutants and/or substances of concern and discharging a measurable quantity of these pollutants to the sewer system;
- D. Discharging more than 5% of the flow or load of conventional pollutants received by the POTW treatment plant. (Note: A user discharging a measurable quantity of a pollutant may be classified as nonsignificant if, at the influent to the POTW treatment plant, the pollutant is not detectable.)

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VOLUME CHARGE (USER CHARGE) — The demand sewer use charge which is based, in part or wholly, on the volume of normal sewage discharged into the POTW (there may be surcharges, as provided for in Article XII). The volume charge shall be based on a specific cost per 100 cubic feet or per 1,000 gallons. The specific charge shall be subject to approval by the Town of Elma Board. The moneys so obtained shall be used for current operation and maintenance, for retirement of bonded indebtedness, and for funding of capital projects, of the POTW. The basis of volume charge calculations shall be made available to the public, on demand, as provided in Article XIII. The volume charge shall be recalculated annually, as well as the surcharge rates.

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WASTEWATER — The liquid and water-carried industrial or domestic wastewaters from dwellings, commercial establishments, industrial facilities, and institutions, together with any groundwater, surface water, and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.

WASTEWATER DISCHARGE PERMIT — A permit as set forth in Article X of this chapter.

WASTEWATER, UNUSUAL STRENGTH OR CHARACTER — See "sewage, unusual strength or character."

WATERS OF THE STATE (STATE'S WATERS) — All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

§ 115-6. Abbreviations. [Amended 12-19-2007 by L.L. No. 3-2007]

The following abbreviations shall have the designated meanings:

Abbreviation	Meaning
ANSI	American National Standards Institute
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
BMP	Best management practice
BOD	Biochemical oxygen demand
CEO	Code Enforcement Officer
CFR	Code of Federal Regulations
COD	Chemical oxygen demand
CPLR	Code of Public Law and Rules
EPA	Environmental Protection Agency
L	Liter
Mg	Milligram
Mg/l	Milligrams per liter
MS4	Municipal separate storm sewer system
NCPI	National Clay Pipe Institute
NPDES	National Pollutant Discharge Elimination System
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
NYSDOT	New York State Department of Transportation
P	Total phosphorus

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Abbreviation**Meaning**

POTW	Publicly owned treatment works
PPM	Parts per million, weight basis
PSI	Pounds per square inch
SIC	Standard Industrial Classification
SPDES	State Pollutant Discharge Elimination System
SWDA	Solid Waste Disposal Act, 42 U.S.C. 6901 et seq.
TMDL	Total maximum daily load
TSS	Total suspended solids
U.S.C.	United States Code of Laws
USEPA	United States Environmental Protection Agency

§ 115-7. Undefined terms.

Terms not defined in this article, or terms found to be ambiguous or improperly defined in this article, shall be defined by the Act or regulations pursuant thereto.

ARTICLE III
Use of Public Sewers Required

§ 115-8. Waste disposal unlawful.

It shall be unlawful for any person to place, deposit, or permit to be deposited, in any unsanitary manner, on public or private property, within the Town of Elma or in any area under the jurisdiction of said municipality, any human or animal excrement, garbage, or objectionable waste. Also, no person shall discharge domestic sewage onto the surface of the ground or discharge it in a way that permits it to come to the surface of the ground.

§ 115-9. Connecting private sewage system to storm sewer unlawful.

No person shall connect a private sewage system so that sewage flows into a storm sewer or into a drain intended exclusively for stormwater.

§ 115-10. Discharge of sewage into well prohibited.

No person shall discharge sewage into a well.

§ 115-11. Wastewater discharge unlawful. [Amended 12-19-2007 by L.L. No. 3-2007]

It shall be unlawful to discharge to any natural outlet, within the Town of Elma, or in any area under the jurisdiction of said municipality, any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter. Notwithstanding the foregoing, no materials other than stormwater shall be discharged into the MS4 except as provided in Article XV of this chapter.

§ 115-12. Building permit allowed only when approved wastewater disposal available.

No property owner, builder, or developer shall be issued a building permit for a new dwelling or structure requiring sanitary facilities unless a suitable and approved method of wastewater disposal, conforming to this chapter, is available. All housing construction or building development which takes place after this chapter is enacted shall provide for an approved system of sanitary wastewater treatment.

§ 115-13. Private wastewater disposal unlawful.

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, cesspool, septic tank, or other facility intended or used for disposal of wastewater when sanitary sewers are available. Septic systems approved by the Erie County Health Department are to be installed when sanitary sewers are not available.

§ 115-14. Connection to public sewer required.

The owner(s) of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the Town of Elma Sewer District, and abutting on any street, alley, or right-of-way in which there is now located or may, in the future, be located a public sewer, is hereby required, at the owner's expense, to install suitable sanitary facilities therein, and to connect such facilities directly with the proper public sewer, in accordance with the provisions of this chapter, within 90 days after official notice to do so, provided that said public sewer is within 100 feet (30.5 meters) of the property line.

§ 115-15. Limitation on use of public sewers.

The use of the Town of Elma public sewers shall be strictly limited and restricted, except as provided in § 115-14, to receive and accept the discharge of sewage and other wastes, including industrial wastes generated on or discharged from real property within the bounds of the service area of the POTW.

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§ 115-16. Wastewater from outside POTW service area; intermunicipal agreements.

- A. The Town of Elma Board, on the recommendation of the Superintendent, shall have the authority to enter into agreements to accept sewage and other wastes, including industrial wastes, generated by or discharged from persons outside the service area of the POTW.
- B. If the person is a municipality, that municipality shall have enacted a sewer use law as restrictive on the discharge of sewage and other wastes as the restrictions contained in this chapter.
- C. If the person is not a municipality, the acceptance shall be made only with the expressed written consent of the Superintendent (the issuance of a permit) setting forth the terms and conditions of such an acceptance.

§ 115-17. Moratorium.

At the recommendation of the Superintendent, who determines that one or more segments of the POTW is exceeding its hydraulic capacity at any time any specific purpose of this chapter is being violated, the Town of Elma Board shall have the authority to limit or deny new connections to the POTW until the conditions leading to the moratorium are corrected. Such correction may be by:

- A. Construction of new facilities.
- B. Enlarging existing facilities.
- C. Correction of inflow and infiltration.
- D. Cleaning and repairing of existing facilities.

§ 115-18. Basis of sewer use requirement.

All requirements, directives, and orders calling for mandatory use of the sewers, within the service area of the POTW, for the proper discharge of sewage and other wastes, including industrial wastes, shall be established and given by the Town of Elma Board, NYSDEC, USEPA, and/or other such state or federal agencies which have enforcement powers.

ARTICLE IV
Private Wastewater Disposal

§ 115-19. Where public sewer unavailable, private wastewater disposal required.

Where a public sewer is not available, under the provisions of § 115-11, the building lateral shall be connected to a private wastewater disposal system complying with the provisions of the Rules and Regulations of the NYSDOH, NYSDEC, and/or the Erie County Health Department.

§ 115-20. Connection of two buildings to same septic tank prohibited.

No two separate permanent buildings, where the intended use for either is for a distinct and separate business or a dwelling place for a private family or families, shall be connected to the same individual septic tank and tile absorption field.

§ 115-21. Construction permit application.

A completed application form, containing results of percolation tests, computations, and a plot plan, including the design and cross section of the wastewater disposal system, in relation to lot lines, adjacent and on-site well or water supply, and buildings, shall be submitted to the Town of Elma. A fee, established by Article XII, shall accompany the application. The wastewater disposal system shall be designed by a professional engineer, licensed surveyor, or architect, and shall be in accordance with the NYSDOH "Standards for Waste Treatment Works," or NYSDEC "Standards for Commercial and Institutional Facilities," as appropriate.

§ 115-22. Construction permit required before construction commencement.

A written construction permit shall be obtained from the Building Department before construction commencement. The Building Inspector, Superintendent, or his designated representative shall be permitted to inspect the construction work at any stage, without prior notice.

§ 115-23. Preventing nuisances, rehabilitation required.

When the liquid or liquid-borne effluent from a private wastewater disposal system enters any watercourse, ditch, storm sewer, or water supply system, located in the Town of Elma, in such a manner, volume, and concentration so as to create a hazardous, offensive, or objectionable condition, in the opinion of the Erie County Health Department, or the NYSDOH, the owner of the premises upon which such wastewater disposal system is located, upon receiving written notice from the Erie County Health Department, or the NYSDOH, to do so, shall, within 90 days, after receipt of such notice, repair, rebuild, or relocate such wastewater disposal system for the purpose of eliminating such hazardous, offensive, or objectionable conditions. The repair, rebuilding, or relocation of the system shall be accomplished in accordance with the rules and regulations of the NYSDOH and the Erie County Health Department, at the owner's expense.

§ 115-24. Sanitary operation required.

The owner shall operate and maintain the private wastewater disposal system in a satisfactory manner at all times, at the owner's expense.

§ 115-25. Septage removal.

Where a private wastewater disposal system utilizes a cesspool or a septic tank, septage shall be removed from the cesspool or septic tank, by a licensed hauler of trucked and hauled wastes, at three-year intervals or more frequently.

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§ 115-26. Direct connection to new public sewers required.

At such time that a public sewer becomes available to a property, a direct connection shall be made to the public sewer, in compliance with this chapter, and any cesspool, septic tank, and similar wastewater disposal facilities shall be cleaned of septage, by a licensed septage hauler, and finally either filled with clean sand, bank-run gravel, or dirt, or removed and properly disposed. When the connection is made to the public sewer, the connection to the private wastewater disposal facility shall be broken, and both ends of the break shall be plugged, as appropriate.

§ 115-27. Additional requirements.

No statement in this article shall be construed to prevent, or interfere with, any additional requirements that may be deemed necessary by the Superintendent, to protect public health and public welfare.

ARTICLE V
New Sewers or Sewer Extensions

§ 115-28. Proper design.

- A. New sanitary sewers and all extensions to sanitary sewers owned and operated by the Town of Elma shall be designed by a professional licensed to practice sewer design in the state, in accordance with the Recommended Standards for Sewage Works, as adopted by the Great Lakes - Upper Mississippi River Board of State Sanitary Engineers ("Ten State Standards"), and in strict conformance with all requirements of the NYSDEC. Plans and specifications shall be submitted to and written approval shall be obtained from the Superintendent, the Erie County Health Department, and the NYSDEC, before initiating any construction. The design shall anticipate and allow for flows from all possible future extensions or developments within the immediate drainage area.
- B. If, however, there is inadequate capacity in any sewer which would convey the wastewater or if there is insufficient capacity in the POTW treatment plant to treat the wastewater properly, the application shall be denied. Sewer line and POTW treatment plant current use shall be defined as the present use and the unutilized use which has been committed, by resolution, to other users by the Town of Elma Board.

§ 115-29. New sewers subject to approval, fees, inspection, testing, and reporting.

When a property owner, builder, or developer proposes to construct sanitary sewers or extensions to sanitary sewers in an area proposed for subdivision, the plans, specifications, and method of installation shall be subject to the approval of the Superintendent, and the Erie County Health Department, in accordance with § 115-28. Said property owner, builder, or developer shall pay for the entire installation, including a proportionate share of the treatment plant, intercepting or trunk sewers, pumping stations, force mains, and all other Town of Elma expenses incidental thereto. Each street lateral shall be installed and inspected pursuant to Article VI, and inspection fees shall be paid by the applicant prior to initiating construction. Design and installation of sewers shall be as specified in § 115-31 through 115-34, and in conformance with Paragraphs 3 through 6 of ASTM Specification C-12. The installation of the sewer shall be subject to periodic inspection by the Superintendent, without prior notice. The Superintendent shall determine whether the work is proceeding in accordance with the approved plans and specifications, and whether the completed work will conform with the approved plans and specifications. The sewer, as constructed, must pass the infiltration test (or the exfiltration test, with prior approval), required in §§ 115-36 through 115-42, before any building lateral is connected thereto. The Superintendent shall be notified 30 days in advance of the start of any construction actions so that such inspection frequencies and procedures as may be necessary or required may be established. No new sanitary sewers will be accepted by the Town of Elma Board until such construction inspections have been made so as to assure the Town of Elma Board of compliance with this chapter and any amendments or additions thereto. The Superintendent has the authority to require such excavation as necessary to inspect any installed facilities if the facilities were covered or otherwise backfilled before they were inspected so as to permit inspection of the construction. The Superintendent shall report all findings of inspections and tests to the Town of Elma Board.

§ 115-30. Plans, specifications, and pipe test results required.

Plans, specifications, and methods of installation shall conform to the requirements of this article. Components and materials of wastewater facilities not covered in this chapter, such as pumping stations, lift stations, or force mains, shall be designed in accordance with § 115-28, and shall be clearly shown and detailed on the plans and specifications submitted for approval. Force main details are covered in §§ 115-43 through 115-44. When requested, the applicant shall submit, to the Superintendent and to the Erie County Health Department, all design calculations and other pertinent data to supplement review of the plans and specifications. Results of manufacturer's tests on each lot of pipe delivered to the job site shall also be furnished, upon request.

§ 115-31. Sewer pipe.

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- A. Sewer pipe materials can be found in the sewer specifications document.
- B. The minimum internal pipe diameter shall be eight inches for gravity sewers and three inches for low-pressure sewers.
- C. Joints for the selected pipe shall be designed and manufactured such that O-ring gaskets of the snap-on type are used.
- D. Gaskets shall be continuous, solid, natural or synthetic rubber, and shall provide a positive compression seal in the assembled joint, such that the requirements of §§ 115-36 through 115-42 are met.
- E. Joint preparation and assembly shall be in accordance with the manufacturer's recommendations.
- F. Wye branch fittings, as approved by the Superintendent, shall be installed, for connection of street laterals, in accordance with §§ 115-56 through 115-57.

§ 115-32. Safety and load factors.

- A. Selection of pipe class shall be predicated on the following criteria:
 - (1) Safety factor: 1.5.
 - (2) Load factor: 1.7.
 - (3) Weight of soil: 120 pounds cubic feet.
 - (4) Wheel loading: 16,000 pounds.
- B. Utilizing the foregoing information, design shall be made as outlined in Chapter IX of the Water Pollution Control Federation Manual of Practice No. 9, latest edition, "Design and Construction of Sanitary and Storm Sewers," and the pipe shall have sufficient structural strength to support all loads to be placed on the pipe, with a safety factor as specified above.
- C. PVC pipe shall not be encased in concrete due to the different coefficients of linear thermal expansion.

§ 115-33. Sewer pipe installation.

- A. Local utilities shall be contacted to verify construction plans and to make arrangements to disconnect all utility services where required to undertake the construction work. The utility services shall later be reconnected. The work shall be scheduled so that there is minimum inconvenience to local residents. Residents shall be provided proper and timely notice regarding disconnection of utilities.
- B. The construction right-of-way shall be cleared only to the extent needed for construction. Clearing consists of removal of trees which interfere with construction, removal of underbrush, logs, and stumps, and other organic matter, removal of refuse, garbage, and trash, removal of ice and snow, and removal of telephone and power poles, and posts. Any tree which will not hinder construction shall not be removed and shall be protected from damage by any construction equipment. Debris shall not be burned, but hauled for disposal in an approved manner.
- C. The public shall be protected from personal and property damage as a result of the construction work.
- D. Traffic shall be maintained at all times in accordance with applicable highway permits. Where no highway permits are required, at least 1/2 of a street shall be kept open for traffic flow.
- E. Erosion control shall be performed throughout the project to minimize the erosion of soils onto lands or into waters adjacent to or affected by the work. Erosion control can be effected by limiting the amount of clearing and grubbing prior to trenching, proper scheduling of the pipe installation work, minimizing time of open

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trench, prompt grading and seeding, and filtration of drainage.

- F. The trench shall be excavated only wide enough for proper installation of the sewer pipe, manhole, and appurtenances. Allowances may be made for sheeting, dewatering, and other similar actions to complete the work. Roads, sidewalks, and curbs shall be cut, by sawing or by other methods as approved by the Superintendent, before trench excavation is initiated.
- G. Under ordinary conditions, excavation shall be by open cut from the ground surface. However, tunneling or boring under structures other than buildings may be permitted. Such structures include crosswalks, curbs, gutters, pavements, trees, driveways, and railroad tracks.
- H. Open trenches shall be protected at all hours of the day with barricades, as required.
- I. Trenches shall not be open for more than 30 feet in advance of pipe installation nor left unfilled for more than 30 feet in the rear of the installed pipe, when the work is in progress, without permission of the Superintendent. When work is not in progress, including overnight, weekends, and holidays, the trench shall be backfilled to ground surface.
- J. The trench shall be excavated approximately six inches deeper than the final pipe grade. When unsuitable soils are encountered, these shall be excavated to a maximum depth of 2 1/2 feet below the final pipe invert grade and replaced with select materials.
- K. Ledge rock, boulders, and large stones shall be removed from the trench sides and bottom. The trench shall be over-excavated at least 12 inches for five feet, at the transition from rock bottom to earth bottom, centered on the transition.
- L. Maintenance of grade, elevation, and alignment shall be done by some suitable method or combination of methods.
- M. No structure shall be undercut unless specifically approved by the Superintendent.
- N. Proper devices shall be provided and maintained operational at all times, to remove all water from the trench as it enters. At no time shall the sewer line be used for removal of water from the trench.
- O. To protect workers and to prevent caving, shoring and sheeting shall be used, as needed. Caving shall not be used to backfill the trench. Sheeting shall not be removed but cut off no lower than one foot above the pipe crown nor no higher than one foot below final grade, and left in the trench, during backfill operations.
- P. The pipe barrel shall be supported, along its entire length, on a minimum of six inches of crusher run max. 1/2 inch stone free of organic material. This foundation shall be firmly tamped in the excavation.
- Q. Bell holes shall be hand excavated, as appropriate.
- R. Pipe shall be laid from low elevation to high elevation. The pipe bell shall be up-gradient; the pipe spigot shall be down-gradient.
- S. Joint preparation and assembly shall be in accordance with the manufacturer's written instructions.
- T. The grade and alignment shall be checked and made correct. The pipe shall be in straight alignment. Any negotiation of curves shall be at manholes, except when site conditions require alternative pipe laying procedures. These alternative procedures, including bending the pipe barrel, deflecting the joint, and using special fittings, shall require prior written approval of the plans and also written confirmation approval of need by the Superintendent after examination of the site conditions.
- U. When a smaller sewer joins a larger one, the invert of the larger sewer shall be lowered sufficiently to maintain the same hydraulic gradient. An approximate method which may be used for securing this result is to place the 0.8 depth of both sewers at the same elevation.

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V. Crushed stone shall be placed over the laid pipe to a depth of at least six inches. The embedment of thermoplastic pipe shall be in accordance with ASTM D2321 using class 1A or 1B backfill materials. Care shall be exercised so that stone is packed under the pipe haunches. Care shall be exercised so that the pipe is not moved during placement of the crushed stone.

W. The migration of fines from surrounding backfill or native soils shall be restricted by gradation of embedment materials or by use of suitable filter fabric.

X. The remaining portion of the trench above the pipe embedment shall be backfilled in foot lifts which shall be firmly compacted. Compaction near/under roadways, driveways, sidewalks, and other structures shall be to 95% of the maximum moisture-density relationship, as determined by ASTM Specification D 698, Method D. Ice, snow, or frozen material shall not be used for backfill.

§ 115-34. Cleanout installation.

A. Cleanouts for low-pressure sewers shall be placed at intervals of approximately 400 to 500 feet, at major changes of direction, where one collection main joins another main and at the upstream end of each main branch.

B. The design of the cleanouts shall be as approved by the Superintendent.

§ 115-35. Manholes and manhole installation.

A. Design of all manholes shall be submitted to the Superintendent and shall receive approval prior to placement.

B. Manholes shall be placed where there is a change in slope or alignment, and at intervals not exceeding 400 linear feet except as authorized by the Superintendent.

C. Manhole bases shall be constructed or placed on a minimum of six inches of crusher run max 1/2 inch stone free of organic materials.

D. Manhole bases shall be constructed of 4,000 psi (twenty-eight-day) concrete eight inches thick, or shall be precast bases properly bedded in the excavation. Field-constructed bases shall be monolithic, properly reinforced, and extend at least six inches beyond the outside walls of lower manhole sections. Precast manhole bases shall extend at least six inches beyond the outside walls of lower manhole sections.

E. Manhole construction.

- (1) Manholes shall be constructed using precast minimum four-foot diameter concrete manhole barrel sections, and an eccentric top section, conforming to ASTM Specification C-478, with the following exceptions on wall thickness:

Manhole Diameter (feet)	Wall Thickness (inches)
4	5
5	6
6	7
6 1/2	7 1/2
7	8
8	9

- (2) All sections shall be cast solid, without lifting holes.

- § 115-35 (3) Flat top slabs shall be a minimum of eight inches thick and shall be capable of supporting a H-20 loading. § 115-36
- F. All joints between sections shall be sealed with an O-ring rubber gasket, meeting the same specifications as pipe joint gaskets, or butyl joint sealant completely filling the joint.
 - G. All joints shall be sealed against infiltration. All metal parts shall be thickly coated with bitumastic or elastomeric compound to prevent corrosion.
 - H. No steps or ladder rungs shall be installed in the inside or outside manhole walls at any time.
 - I. No holes shall be cut into the manhole sections closer than six inches from joint surfaces.
 - J. Manholes which extend above grade shall not have an eccentric top section. The top plate shall be large enough to accommodate the cover lifting device and the cover.
 - K. The elevation of the top section shall be such that the cover frame top elevation is 0.5 foot above the one-hundred-year flood elevation (in a field), 0.5 foot above a lawn elevation, or at finished road or sidewalk grade.
 - L. When located in a traveled area (road or sidewalk), the manhole frame and cover shall be heavy-duty cast iron. When located in a lawn or in a field, the manhole frame and cover may be light-duty cast iron. The cover shall be 36 inches, minimum, in diameter. The minimum combined weight of the heavy-duty frame and thirty-six-inch cover shall be 735 +/- 5% pounds. The minimum combined weight of the light-duty frame and thirty-six-inch cover shall be 420 +/- 5% pounds. The mating surfaces shall be machined and painted with tar pitch varnish. The cover shall not rock in the frame. Infiltration between the cover and frame shall be prevented by proper design and painting. Covers shall have "Sanitary Sewer" cast into them. Covers shall have lifting holes suitable for any lifting/jacking device. The lifting holes shall be designed so that infiltration is prevented.
 - M. A drop of at least 0.1 foot shall be provided between incoming and outgoing sewers on all junction manholes and on manholes with bends greater than 45°.
 - N. Inverts and shelves/benches shall be placed after testing the manholes and sewers.
 - O. Benches shall be level and slope to the flow channel at about one inch per foot.
 - P. The minimum depth of the flow channel shall be the nominal diameter of the smaller pipe. The channel shall have a steel trowel finish. The flow channel shall have a smooth curvature from inlet to outlet.
 - Q. Manhole frames, installed at grade, shall be set in a full bed of mortar with no less than two nor more than four courses of brick underneath to allow for later elevation adjustment. In lieu of brick, grade rings may be used for elevation adjustment. Grade rings shall not exceed six inches in depth. The total number of grade rings shall not exceed 12 inches in height, however, in no event shall more than three grade rings be used.
 - R. Manholes which extend above grade shall have the frames cast into the manhole top plate. The top plate shall be securely anchored to the manhole barrel, by a minimum of six one-half-inch corrosion-resistant anchor bolts, to prevent overturning when the cover is removed. The anchor bolts shall be electrically isolated from the manhole frame and cover.
 - S. Internal drop pipes and fittings shall be PVC plastic sewer pipe in compliance with ASTM D2241. Corrosion-resistant anchors shall be used to attach the drop pipe to the inside surface of the manhole barrel.

§ 115-36. Infiltration/exfiltration testing.

All sanitary sewers or extensions to sanitary sewers, including manholes, shall satisfy requirements of a final infiltration test before they will be approved and wastewater flow permitted by the Town of Elma. The exfiltration rate shall not exceed 25 gallons per 24 hours per mile per nominal diameter in inches. An exfiltration test may be

§ 115-36 substituted for the infiltration test; the same rate shall not be exceeded. The infiltration test shall be performed by the applicant, under the supervision of the Superintendent, who shall have the responsibility for making proper and accurate measurements required. The exfiltration test consists of filling the pipe with water to provide a head of at least five feet above the top of the pipe or five feet above groundwater, whichever is higher, at the highest point under test, and then measuring the loss of water, from the pipe section under test, by the amount of water which must be added to maintain the original level. However, under no circumstances shall the head at the downstream manhole exceed 10 feet or fill to within six inches of the top of the downstream manhole. Should this condition prevail, the testing methods in § 115-41 and/or § 115-42 shall be utilized. In this test, the test section must remain filled with water for at least 24 hours prior to taking any measurements. Exfiltration shall be measured by the drop of water level in a standpipe with a closed bottom end, or in one of the sewer manholes serving the test section. When a standpipe and plug arrangement is used in the upper manhole in the test section, there shall be some positive method for releasing entrapped air prior to taking any measurements.

§ 115-37. Test section.

The test section shall be as ordered or as approved, but in no event longer than 1,000 feet. In the case of sewers laid on steep grades, the test length may be limited by the maximum allowable internal pressure on the pipe and joints at the lower end of the test section. For purposes of determining the leakage rate of the test section, manholes shall be considered as sections of forty-eight-inch diameter pipe, five feet long. The maximum allowable leakage rate for such a section is 1.1 gallons per 24 hours. If leakage exceeds the allowable rate, then necessary repairs or replacements shall be made, and the section retested.

§ 115-38. Test period.

The test period during which the test measurements are taken shall not be less than two hours.

§ 115-39. Pipe lamping.

Prior to testing, the section shall be lamped. Any length of pipe out of straight alignment shall be realigned.

§ 115-40. Deflection testing.

Also prior to testing, all plastic pipe, in the test section, shall be tested for deflection. Deflection testing shall involve the pulling of a rigid ball or mandrel, whose diameter is 95% of the pipe inside diameter, through the pipe. Any length of pipe with a deflection greater than 5% shall be replaced. The test section shall be flushed just prior to deflection testing. The test shall not be performed with a mechanical pulling device.

§ 115-41. Low-pressure air testing alternative.

- A. In lieu of hydrostatic testing (exfiltration or infiltration), low-pressure air testing may be employed. Low-pressure air tests shall conform to ASTM Specification C 828. All sections to be tested shall be cleaned and flushed and shall have been backfilled, prior to testing. Air shall be added until the internal pressure of the test section is raised to approximately 4.0 PSIG. The air pressure test shall be based on the time, measured in seconds, for the air pressure to drop from 3.5 PSIG to 2.5 PSIG.
- B. Acceptance is based on limits tabulated in the "Specification Time Required for a 1.0 PSIG Pressure Drop" in the Uni-Bell PVC Pipe Association "Recommended Practice For Low-Pressure Air Testing of Installed Sewer Pipe."
- C. Before pressure is applied to the line all connections shall be firmly plugged. Before the test period starts, the air shall be given sufficient time to cool to ambient temperature in the test section.
- D. If the test section is below groundwater, the test pressure shall be increased by an amount sufficient to compensate for groundwater hydrostatic pressure; however, the test pressure shall not exceed 10 PSI or a

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lower pressure as required by the Superintendent.

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- E. The pressure test gauge shall have been recently calibrated, and a copy of the calibration results shall be made available to the Superintendent prior to testing.

§ 115-42. Vacuum testing alternative.

- A. In lieu of hydrostatic testing (exfiltration or infiltration), vacuum testing may be employed for testing of sewer lines and manholes. Sewer lines and manholes shall be tested separately. All sewer lines to be tested shall be cleaned and flushed and shall have been backfilled prior to testing. The vacuum test shall be based on the time, measured in seconds, for the vacuum to decrease from 10 inches of mercury to nine inches of mercury for manholes, and from seven inches of mercury to six inches of mercury for sewers.
- B. Acceptance of manholes is based on the following:

Manhole Depth (feet)	Manhole Diameter (feet)	Time to Drop 1 Inch of Hg (10 inches to 9 inches) (seconds)
10 or less	4	120
10 to 15	4	150
15 to 25	4	180

NOTE: For five-foot diameter manholes, add 30 seconds to the times above.

NOTE: For six-foot diameter manholes, add 60 seconds to the times above.

- C. If the test on the manhole fails (the time is less than that tabulated above), necessary repairs shall be made and the vacuum test repeated until the manhole passes the test.
- D. Acceptance of sewers (seven inches Hg to six inches Hg) is based on the time tabulated in the "Specification Time Required for a 0.5 PSIG Pressure Drop" in the Uni-Bell PVC Pipe Association "Recommended Practice For Low-Pressure Air Testing of Installed Sewer Pipe."
- E. The vacuum test gauge shall have been recently calibrated, and a copy of the calibration results shall be made available to the Superintendent prior to testing.

§ 115-43. Force mains.

Force mains serving sewage lifting devices, such as grinder pumps and pump stations, shall be designed in accordance with § 115-28. Additional design requirements are:

- A. Force main pipe material shall be as per the specifications document.
- B. Trenching, bedding, and backfilling shall be in accordance with § 115-33.
- C. Joint preparation and assembly shall be in accordance with the manufacturer's written instructions.
- D. Anchorages, concrete blocking and/or mechanical restraint shall be provided when there is a change of direction of 7 1/2° or greater.
- E. Drain valves shall be placed at low points.
- F. Automatic air relief valves shall be placed at high points and at 400 feet intervals, on level force main runs.

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- G. Air relief and drain valves shall be suitably protected from freezing.
- H. When the daily average design detention time, in the force main, exceeds 20 minutes, the manhole and sewer line receiving the force main discharge or the sewage shall be treated so that corrosion of the manhole and the exiting line are prevented. The corrosion is caused by sulfuric acid biochemically produced from hydrogen sulfide anaerobically produced in the force main.
- I. The force main shall terminate, in the receiving manhole, at a PVC plastic sewer pipe "T." The vertical arms of the "T" shall be twice the diameter of the force main. The upper arm shall be at least four feet long; the lower arm shall terminate in a PVC plastic sewer pipe 90° elbow in a flow channel directed to the manhole exit pipe. The "T" and its arms shall be securely fastened to the inside surface of the manhole wall using corrosion resistant anchors.

§ 115-44. Force main testing.

All force mains shall be subjected to hydrostatic pressure of 150% of the normal operating pressure. The duration of the test, at pressure, shall be at least two hours. Before conducting the test, the pipe shall be filled with water, and all air shall be expelled. During the test, water shall be added, as needed, to maintain the test pressure. The amount of water added shall be recorded so as to calculate leakage. Leakage shall not exceed 25 gallons per day per mile per inch nominal pipe diameter. During the test, the owner and the Superintendent shall walk the route of the force main and examine the exposed pipe and the ground covering any backfilled pipe to discover leaks. Leakage in excess of that specified above shall be corrected with new material at the owner's expense and the test repeated. Any observed leaks shall be repaired at the owner's expense. Each test section length shall be as approved by the Superintendent, but in no event longer than 1,000 feet.

§ 115-45. Final acceptance and warranty/surety.

All sanitary sewers and extensions to sanitary sewers constructed at the applicant's expense, after final approval and acceptance by the Superintendent, and concurrence by the Town of Elma Board, shall become the property of the Town of Elma, and shall thereafter be operated and maintained by the Town of Elma. No sanitary sewer shall be accepted by the Town of Elma until four copies of as-built drawings have been so filed with the Superintendent and the Superintendent has approved the submitted drawings. Said sewers, after their acceptance by the Town of Elma, shall be guaranteed against defects in materials or workmanship for one year, by the applicant. The guarantee shall be in such form and contain such provision as deemed necessary by the Town of Elma Board, secured by a surety bond or such other security as the Town of Elma Board may approve.

§ 115-46. Liability insurance coverage during construction period.

- A. All contractors engaged in connecting house laterals with sanitary sewers, who perform any work within the right-of-way of any highway, shall file a bond in the amount of \$5,000 with the Town of Elma Clerk to indemnify the Town of Elma against loss, cost, damage or expense sustained or recovered on account of any negligence, omission or act of the applicant for such a permit, or any of his, or their agents arising or resulting directly or indirectly by reason of such permit or consent, or of any act, construction or excavation done, made or permitted under authority of such permit or consent. All bonds shall contain a clause that permits given by the Town of Elma Board may be revoked at any time for just cause.
- B. Before commencing work, the above contractor shall file insurance certificates with the Town of Elma Clerk for the following:
- (1) Workmen's compensation and employer's liability insurance as required by the laws of the state covering the contractor.
 - (2) Personal injury liability having limits of not less than \$500,000 each occurrence and \$500,000 aggregate (completed operations/products, personal injury).

- § 115-46 (3) Property damage liability having limits of not less than \$500,000 for all damages arising during the life of the contract, and shall include, but not be limited to, the following designated hazards: § 115-46
- (a) Premises and operations;
 - (b) Independent contractors;
 - (c) Completed operations and products;
 - (d) Property damage; and
 - (e) Explosions, collapse and underground.
- (4) Comprehensive automobile liability (including nonowned and hired automobiles) having limits of not less than:
- (a) Bodily injury:
 - [1] Each person: \$300,000.
 - [2] Each occurrence: \$500,000.
 - (b) Property damage, each occurrence: \$500,000.
- (5) Business excess liability insurance in the amount of \$2,000,000.
- (6) All insurance policies must provide for five business days' notice to the Town of Elma before cancellation and must cover all liabilities of the Town of Elma and be in a form approved by the Town of Elma Board and be in a satisfactory form approved by the Board.
- (7) The minimum insurance limits stated above shall be subject to periodic review by the Town of Elma Board and adjustments made, by resolution, as appropriate.
- C. Where it is necessary to enter upon or excavate any highway or cut any pavement, sidewalk or curbing, permission must be obtained from the Superintendent of Highways if a Town of Elma highway is involved, from the County Department of Public Works if a county highway is involved, and/or the New York State Department of Transportation if a state highway is involved.
- D. The minimum insurance limits above shall be as established by the Town of Elma Board and shall be subject to periodic review and adjustment, as appropriate, by the Town of Elma Board.

ARTICLE VI

Building Laterals, Street Laterals Connections, and Fees**§ 115-47. Permit required.**

No unauthorized person shall uncover, make any connection with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent.

§ 115-48. Inflow/infiltration prohibited. [Amended 12-19-2007 by L.L. No. 3-2007]

No person shall discharge or cause to be discharged any storm cooling water or unpolluted industrial waters to any sanitary sewer. Swimming pool drains shall not be connected to any sanitary sewer. Cooling water or industrial water containing contaminants and chlorinated swimming pool water shall not be discharged into the MS4, except as provided in Article XV of this chapter.

§ 115-49. Sewer lateral permits.

- A. There shall be two classes of sewer lateral permits:
 - (1) For residential, commercial, and institutional service; and
 - (2) For service to establishments producing industrial wastes.
- B. In either case, a permit application shall be submitted to the Superintendent. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent. A fee for residential, commercial, institutional and industrial users, as established by the Town of Elma Board, shall accompany the application.
- C. Connections to existing manholes shall be made as directed by the Superintendent.

§ 115-50. New building laterals.

- A. A separate and independent building lateral shall be provided for every building requiring sanitary facilities. When, however, there is a building behind a front building, the second building may use the front building's building lateral, if there is no other way to provide sanitary service to the back building.
- B. New street laterals and/or building laterals shall not go under building basements. In like fashion, a building shall not be constructed over an existing lateral; the lateral shall be relocated after the Superintendent has approved plans showing the relocation. If relocation is not physically possible then the lateral shall be:
 - (1) Exposed and totally encapsulated in not less than three inches of concrete; or
 - (2) Exposed and walled and the building rooms above positively ventilated outdoors.
- C. All existing manholes in or under the basement shall be sealed air-tight in a manner acceptable to the Superintendent. No new manholes shall be constructed on the portion of the lateral under the building.

§ 115-51. Laterals serving several buildings.

When building laterals are to serve multiple dwelling structures, the building lateral shall be sized in accordance with the metered water use and with sound professional engineering judgment.

§ 115-52. Laterals serving complexes.

Where a lateral sewer is to serve a complex of industrial, commercial, institutional, or dwelling structures, special design of the building lateral system shall be required. Such lateral sewer shall be connected to the public sewer

§ 115-52 through a manhole. The Superintendent shall determine if and where this connection to the public sewer is required. § 115-57
If required, a new manhole shall be installed in the public sewer pursuant to §§ 115-34 and 115-109 and the lateral connection made and tested as directed by the Superintendent. Plans and specifications shall be prepared and submitted for approval pursuant to this chapter.

§ 115-53. Dry sewers.

Dry sewers shall be designed and installed in accordance to this chapter.

§ 115-54. Using existing building laterals.

Existing building laterals may be used in connection with new buildings only when they are found, on examination by the Superintendent, to meet all requirements of this chapter.

§ 115-55. Lateral pipe materials.

- A. Building and street lateral pipe materials shall be one of the following:
- (1) Tar-coated, service grade, cast-iron soil pipe conforming to ASTM Specification A-74, "Cast Iron Pipe and Fittings." All dimensions, weight and markings of the pipe shall conform to the requirements of ANSI, Designation A112.5.1, except spigot ends shall be plain end, if gasket joints are used.
 - (2) Polyvinyl chloride (PVC) pipe and fittings conforming to ASTM Specification D-3034-73, "SDR-35 Polyvinyl Chloride (PVC) Sewer Pipe and Fittings." All pipe shall be suitable for gravity sewer service. Provisions shall be made for contraction and expansion at each joint with a rubber ring. The bell shall consist of an integral wall section stiffened with two PVC retainer rings which securely lock the solid cross-section ring into position. Minimum pipe stiffness (F/Y) at 5% deflection shall be 46 PSI when tested in accordance with ASTM Specification D-2412.
- B. Any part of the building or street lateral that is located within five feet of a water main or water service shall be constructed of cast-iron soil pipe. Cast-iron soil pipe may be required by the Superintendent where the building or street lateral is likely to be damaged by tree roots. If installed on fill or unstable ground, the building or street lateral shall be of cast-iron soil pipe, although other pipe material may be permitted if such pipe is uniformly supported on a poured concrete cradle approved by the Superintendent. The distance between consecutive joints, as measured along the center line of the installed pipe, shall not be less than 10 feet, except under abnormal circumstances, in which case this dimension may be diminished, if approved by the Superintendent. The size and slope of building and street laterals shall be subject to approval by the Superintendent, but in no event shall the internal pipe diameter be less than four inches, nor shall the pipe slope be less than 1/4 inch per foot.
- C. The street lateral shall include a full port curb stop with flow-through diameter equal to that of the lateral. A curb box shall be installed.

§ 115-56. Street lateral to public sewer connection.

- A. At the point of connection of a street lateral to a main sewer, a standard wye fitting and sufficient one-eighth (45°) bend fittings shall be used. The wye fittings shall be installed so that flow in the arm shall transition smoothly into the flow in the public sewer. No lateral connection shall be made to the public sewer, which permits the flow into the public sewer from the lateral to enter at right angles.
- B. The inside diameter of the fittings shall be same diameter as the street lateral inside diameter.

§ 115-57. Future connection locations; as-built drawings.

The street lateral, including the wye and eighth bend fittings, shall be connected to the main sewer at the time of

§ 115-57 constructing the main sewer for each proposed lot for either immediate or future development. Laterals installed for future development shall be fitted a standard plug approved for use by the Superintendent. All sewer connections shall be via a properly installed saddle on the main sewer pipe. No portion of the lateral pipe shall protrude into the main sewer pipe. The location of all lateral connections shall have a six-inch PVC riser to the surface, to locate the lateral connection. Upon connection the six-inch PVC riser will be reinstalled to serve as a cleanout for the house lateral. The cleanout will be capped watertight at grade and located on the inspection map using measurements off the house. The location of all lateral connections shall be indicated on a drawing with a minimum of three tie lines indicated. Four copies of this drawing, showing the as-built location of these connections, shall be furnished to the Superintendent. No sanitary sewer shall be accepted by Town of Elma until four copies of this record drawing have been so filed with the Superintendent and the Superintendent has approved the submitted drawings.

§ 115-58. Special manhole requirements.

When any street lateral is to serve a school, hospital, or similar institution, or public housing, or is to serve a complex of industrial or commercial buildings, or which, in the opinion of the Superintendent, will receive wastewater or industrial wastes of such volume or character that frequent maintenance of said building or street lateral is anticipated, then such street lateral shall be connected to the public sewer through a manhole. The Superintendent shall determine if and where this type of connection to the public sewer is required. Connections to existing manholes shall be made as directed by the Superintendent. If required, a new manhole shall be installed in the public sewer pursuant to §§ 115-35 and 115-109, and the lateral connection made thereto as directed by the Superintendent.

§ 115-59. Laterals at and near buildings.

- A. Building laterals laid parallel to a bearing wall shall not be installed closer than three feet to such wall. The building lateral shall enter the basement through the basement wall no less than 12 inches above the basement floor. In no event shall any building lateral be placed below the basement floor, except with the expressed written approval of the Superintendent.
- B. The building lateral shall be laid at uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with properly curved pipe and fittings. Changes of direction of 90° or greater shall be made with a cleanout which extends to grade terminating in a terminal box set in concrete. In building laterals, said cleanouts shall be provided such that the maximum distance between cleanouts is 75 feet. The ends of all building or street laterals which are not connected to the interior plumbing of the building, for any reason, shall be sealed against infiltration by a suitable stopper, plug, or by other approved means.

§ 115-60. Sewage lifting.

In all buildings in which any building drain is too low to permit gravity flow to the public sewer, wastewater carried by such drain shall be lifted by mechanical means and discharged to the building lateral, on approval of the Superintendent.

§ 115-61. Lateral pipe installation.

- A. All excavations required for the installation of a building or street lateral shall be open trench work unless otherwise approved by the Superintendent. Pipe laying and backfilling, regardless of pipe material used, shall be performed in general accordance with paragraphs 3 through 6 of ASTM Specification C-12, except that trench width, measured at the top of the installed pipe, shall not exceed the outside pipe diameter plus 14 inches and, except that no backfill shall be placed until the work has been inspected. The depth of cover over the pipe shall be sufficient to afford protection from frost, but not in any case shall such depth be less than four feet. Where it is physically impossible to provide cover of four feet, the depth may be reduced to a minimum of two feet and the pipe shall be insulated, as approved by the Superintendent.
- B. Sewer lateral shall be installed in a separate trench with a three-foot minimum distance to any other utility.

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Refer to § 115-33P through V on installation procedures.

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- C. Cast iron pipe shall be used to go through the basement wall and shall extend a minimum of 10 feet past the building or extensions of the building (i.e., porches, garage). At this point a J trap shall be installed with a riser extending 12 inches above final grade. This pipe will be topped off with a mushroom-style vent cap.
- D. Watertight capped cleanouts shall be installed at a maximum distance of 75 feet.

§ 115-62. Watertight joints.

All joints and connections shall be made watertight.

§ 115-63. Cast iron pipe poured joints.

Poured joints for cast iron pipe shall be firmly packed with oakum or hemp, and the annulus filled with an approved compound not less than one inch deep. Said compound shall be run in with a single pouring, and caulked tight, if appropriate for the compound used. No paint, varnish, or other coatings shall be permitted on the jointing material until after the joint has been tested and approved. The transition joint between cast iron pipe and other pipe materials shall be made with special adapters and jointing materials approved by the Superintendent. If such joints are hot-poured, the material shall not soften sufficiently to destroy the effectiveness of the joint when subjected to a temperature of 160° F., nor be soluble in any of the wastes carried by the lateral.

§ 115-64. Cast iron push joints.

Premolded gaskets may be used for hub and plain end cast iron pipe joints and joints with fittings, if approved by the Superintendent. The gasket shall be a neoprene compression-type unit which provides a positive seal in the assembled joint. The gasket shall be a premolded, one-piece unit, designed for joining the cast iron hub and plain end soil pipe and fittings. The assembled joint shall be sealed by compression of the gasket between the exterior surface of the spigot and the interior surface of the hub. The joint shall be assembled following the manufacturer's recommendations using acceptable lubricant and special pipe-coupling tools designed for that purpose. The plain spigot end shall be forced into the hub end of the pipe for the full depth of the hub itself. Lubricant shall be a bland, flaxbase, nontoxic material, and shall not chemically attack the gasket material.

§ 115-65. PVC push joints.

Joints for PVC sewer pipe shall follow the manufacturer's recommendations, using properly designed couplings and rubber gaskets, pursuant to the published information relating thereto, and conforming to the applicable ASTM specification identified in § 115-55.

§ 115-66. Building lateral/street lateral connection.

- A. The connection of the building lateral to an existing street lateral shall be made at the property line. Except as provided under §§ 115-29 and 115-30, if a street lateral has not previously been provided, the street lateral will be constructed from the existing public sewer to the property line, by a licensed plumber, at the owner's expense. The street lateral shall be installed with a properly sealed and covered cleanout to grade located at the property line. The cleanout shall terminate in a metal box imbedded in concrete.
- B. The cost of constructing the street lateral from the existing public sewer to the property line shall be at the property owner's expense; all subsequent costs and expense incidental to the installation and connection of the building lateral shall also be borne by the owner.
- C. The property owner shall indemnify the Town of Elma from any loss or damage that may directly or indirectly be occasioned by the installation of the building lateral.
- D. It shall be the responsibility of the property owner to maintain, repair, or replace the building lateral, as

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needed.

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- E. The method of connection of the building lateral to the street lateral will be dependent upon the type of sewer pipe material, and, in all cases, shall be approved by the Superintendent.

§ 115-67. Cleanout repair/replacement.

If, in the judgment of the Superintendent, it is determined that a building lateral, without a property line cleanout, needs repair or replacement, the Town of Elma may install a cleanout at the property line, at the property owner's expense, such that the street lateral can be maintained independently of the building lateral.

§ 115-68. Street lateral replacement ownership.

Any existing street lateral which, upon examination by the Superintendent, is determined to be in need of replacement will be replaced with a new street lateral with a property line cleanout. The replacement street lateral shall be constructed by a licensed plumber. The cost of constructing the replacement street lateral and cleanout shall be at the property owner's expense.

§ 115-69. Testing.

The street lateral, building lateral, or the combined lateral shall be tested for infiltration/exfiltration by:

- A. Pipe method described in § 115-41; or
- B. By a suitable joint method, with the prior written approval of the Superintendent.

§ 115-70. Connection inspection.

- A. The applicant for the building lateral permit shall notify the Superintendent when the building lateral is ready for inspection and connection is to be made to the street lateral. The connection shall be made under the supervision of the Superintendent.
- B. The applicant for the street lateral permit shall notify the Superintendent when the street lateral is ready for inspection and connection is to be made to the main sewer. The connection shall be made under the supervision of the Superintendent.
- C. See § 115-61.

§ 115-71. Trench inspections.

When trenches are excavated for the laying of building lateral pipes or for laying of street lateral pipes, such trenches shall be inspected by the Superintendent. Before the trenches are backfilled, the person performing such work shall notify the Superintendent when the laying of the building lateral is completed, and no backfilling of trenches shall begin until approval is obtained from the Superintendent.

§ 115-72. Public safety provisions required; restoration of disturbed areas.

All excavations for constructing building laterals shall be adequately protected with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed, in the course of the work, shall be restored in a manner satisfactory to the Superintendent. When installation requires disturbance of paved public roads and shoulders, restoration shall involve backfilling to road grade. Shortly thereafter the Town of Elma Department of Public Works (DPW) shall complete road and shoulder restoration to the Town of Elma Standards. The cost for such final road and shoulder restoration by the DPW shall be included with the fees paid with the application for the permit required in § 115-49.

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§ 115-73. Interior cleanout.

- A. An interior clean-out fitting shall be provided for each building lateral at a readily accessible location, preferably just inside the basement wall. The fitting shall contain a forty-five-degree branch with removable plug or test tee, and so positioned that sewer cleaning equipment can be inserted therein to clean the building lateral.
- B. The cleanout diameter shall be no less than the building lateral diameter.

§ 115-74. Costs borne by owner.

All costs associated with the provisions of this article shall be borne by the property owner unless specifically stated or agreed to be a cost borne by the Town of Elma. The property owner shall indemnify the Town of Elma from any loss or damage that may be directly or indirectly occasioned by the installation of the building and street laterals, and connections and appurtenances.

ARTICLE VII
Inflow

§ 115-75. New inflow sources prohibited.

No connections shall be made to a sanitary or to a combined sewer which connections are intended to discharge inflow. Such prohibited connections include, but are not limited to, footing drains, roof leaders, roof drains, cellar drains, sump pumps, catch basins, uncontaminated cooling water discharges, or other sources of inflow.

§ 115-76. Editing inflow sources disconnected.

For properties where separate storm sewers are available within 100 feet of the property line or where, in the judgment of the Superintendent, sufficient natural drainage is available, connections which contribute inflow to the sanitary sewers must be disconnected in a fashion approved by the Superintendent, prior to the sale of the property.

§ 115-77. Existing inflow sources disconnected when property sold.

Upon notice from the Tax Assessor, the Superintendent shall inspect any newly sold property for the purpose of determining if storm sewers or natural drainage is available, and, if so, if all connections which contribute inflow have been disconnected.

§ 115-78. No reconnection of inflow source allowed.

It shall be a willful violation of this chapter for any person to reconnect any inflow source which has been disconnected pursuant to this article.

§ 115-79. Charges for inflow.

The Superintendent is enabled to take whatever action is necessary to determine the amount of inflow including the requirement for installation of a control manhole. The property from which the inflow originated shall be billed for inflow according to Article XII; however, the Town of Elma Board may cause a surcharge at a rate not to exceed five times that for normal sewage volume charge.

§ 115-79.1. Discharges to storm sewers. [Added 12-19-2007 by L.L. No. 3-2007]

Notwithstanding the foregoing provisions of this article, no materials other than stormwater shall be discharged into the MS4, except as provided in Article XV of this chapter.

ARTICLE VIII
Trucked or Hauled Waste

§ 115-80. Licenses and application.

- A. The discharge of trucked or hauled wastes into the Town of Elma sewer system and public sewers tributary thereto will be permitted only with the written approval (license) of the Superintendent. Applicants for such license shall apply on a form provided by the Superintendent. These forms may require information such as vehicle specifications, vehicle license number, vehicle color, NYSDEC permits issued under 6 NYCRR Part 364, approximate annual septage volume expected, service area, and any other information that the Superintendent may require, to determine whether the trucked or hauled wastes could adversely impact the POTW. The application shall be accompanied by a fee prescribed by the Superintendent, not to exceed \$100.
- B. The licensee of trucked or hauled wastes will also be charged a fee for each dumping, in accordance with Article XII. The dumping fee shall be paid prior to dumping.

§ 115-81. Concurrent requirements.

The applicant for a license to truck or haul wastes shall be the owner of the vehicle or vehicles to be used for such discharge. Any false or misleading statement, in any license application, shall be grounds for invalidating the license. All licenses issued by the Superintendent for this purpose shall be for one year. The licensee shall also be duly permitted by the NYSDEC under 6 NYCRR Part 364 ("364 permit"). If for any reason the 364 permit is revoked, the 364 permit lapses or becomes invalid, then the license issued under this article shall become invalid immediately. All acts performed in connection with the license shall be subject to the inspection and regulations, as established by the Superintendent, the terms and conditions of the license and all local and general laws, ordinances, and regulations which are now or may come into effect, and such license may be suspended or revoked, at any time, by the Superintendent for willful, continued, or persistent violation thereof.

§ 115-82. Dumping location and timing.

The Superintendent may require discharging at only certain locations within the POTW, and only at certain times, and on only certain days of the week, or seasons of the year as shall be stated on said license or as may be relocated by the Superintendent, after appropriate notice. The time and conditions for permissible discharge shall be as set forth on the license, or as may be revised by the Superintendent, after appropriate notice.

§ 115-83. Notification of dumping.

Each discharge of trucked or hauled wastes shall be made only with the approval of the Superintendent. The Superintendent may require inspection, sampling, and analysis of each load prior to the discharge of a load. Any extra costs associated with such inspection, sampling, and analysis shall be paid by the licensee.

ARTICLE IX
Discharge Restrictions

§ 115-84. Pretreatment standards.

All users of the Town of Elma POTW will comply with all standards and requirements of the Act and standards and requirements promulgated pursuant to the Act, including but not limited to 40 CFR Parts 406 through 471.

§ 115-85. General prohibitions.

- A. No user shall contribute or cause to be contributed, in any manner or fashion, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the POTW. These general prohibitions apply to all such users of a POTW whether or not the user is subject to National Categorical Pretreatment Standards, or any other national, state, or local pretreatment standards or requirements.
- B. Without limiting the generality of the foregoing, a user may not contribute the following substances to the POTW:
- (1) Any solids, liquids, or gases which, by reason of their nature or quantity, are or may be sufficient, either alone or by interaction with other substances, to cause a fire or an explosion or be injurious, in any way, to the POTW, or to the operation of the POTW. At no time shall both of two successive readings on a flame type explosion hazard meter at the point of discharge into the system (or at any other point in the system) be more than 25% nor any single reading be more than 40% of the lower explosive limit (LEL) of the meter. Unless explicitly allowable by a written permit, prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, carbides, hydrides, and sulfides, and any other substance which the Town of Elma, the state or the EPA has determined to be a fire hazard or hazard to the POTW.
 - (2) Solid or viscous substances which may cause obstruction to the flow in a sewer or otherwise interfere with the operation of the wastewater treatment facilities. Unless explicitly allowable by a written permit, such substances include, but are not limited to, grease, garbage with particles greater than 1/2 inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, plastics, gas, tar asphalt residues, residues from refining or processing fuel or lubricating oil, mud, or glass or stone grinding or polishing wastes.
 - (3) Any wastewater having a pH less than 5.0 or greater than 10.0, unless the POTW was specifically designed to manage such wastewater, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or POTW personnel.
 - (4) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants (including heat), to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or to exceed the limitation set forth in a categorical pretreatment standard. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(A) of the Act.
 - (5) Any noxious or malodorous solids, liquids, or gases which either singly or by interaction with other wastes are sufficient to create a public nuisance or a hazard to life or are sufficient to prevent entry into the sewers for their maintenance or repair.
 - (6) Oils and grease. Any commercial, institutional, or industrial wastes containing fats, waxes, grease, or oils which become visible solids when the wastes are cooled to 10° C. (50° F.); any petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in excess of 100 mg/l or in amounts that will cause interference or pass-through.

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- (7) Any wastewater which will cause interference or pass-through.
- (8) Any wastewater with objectionable color which is not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.
- (9) Any solid, liquid, vapor, or gas having a temperature higher than 65° C. (150° F.); however, such materials shall not cause the POTW treatment plant influent temperature to be greater than 40° C. (104° F.). The Superintendent reserves the right, in certain instances, to prohibit or limit the discharge of wastes whose maximum temperatures are lower than 65° C.
- (10) Unusual flow rate or concentration of wastes, constituting slugs, except by industrial wastewater permit.
- (11) Any wastewater containing any radioactive wastes except as approved by the Superintendent, and in compliance with applicable state and federal regulations.
- (12) Any wastewater which causes a hazard to human life or which creates a public nuisance, either by itself or in combination, in any way, with other wastes.
- (13) Any wastewater with a closed-cup flashpoint of less than 140° F. or 60° C. using the test methods specified in 40 CFR Part 261.21.
- (14) Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

§ 115-86. Concentration based limitations.

- A. No person shall discharge, directly or indirectly, into the POTW wastewater containing any of the following substances in concentrations exceeding those specified below on either a daily or an instantaneous basis, except by permit or as provided for in § 115-87. Concentration limits are applicable to wastewater effluents at the point just prior to discharge into the POTW (end-of-pipe concentrations).
- B. Total load considerations.
 - (1) The Superintendent shall determine the total allowable influent load of each substance from significant industrial users. In determining the total load of each substance that significant industrial users shall be allowed to discharge, the Superintendent shall consider:
 - (a) The quantities of each substance that are uncontrollable because they occur naturally in wastewater;
 - (b) The quantities of each substance that are anthropogenic but are nonetheless uncontrollable;
 - (c) Historical discharge trends;
 - (d) Past pollution control efforts of each significant industrial user as compared to other significant industrial dischargers of the same substance;
 - (e) Potential for growth in the POTW service area;
 - (f) Potential for more restrictive regulatory requirements to be placed on the POTW discharge or sludge disposal or sludge reuse method; and
 - (g) Treatability of the substance.
 - (2) The Superintendent shall apply a minimum 15% safety factor to be protective of the POTW.
- C. To assure that the total loads so calculated, for each substance, are not violated, the Superintendent shall issue permits to significant industrial users limiting discharge loads.

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D. Permits issued in accordance with this section may allow for discharges in excess of limitations set forth under § 115-86.

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§ 115-87. Modification of limitations.

- A. Limitations on wastewater strength or mass discharge contained in this chapter may be supplemented with more stringent limitations when, in the opinion of the Superintendent:
- (1) The limitations in this chapter are not sufficient to protect the POTW;
 - (2) The limitations in this chapter are not sufficient to enable the POTW treatment plant to comply with applicable water quality standards or the effluent limitations specified in the POTW's SPDES permit;
 - (3) The POTW sludge will be rendered unacceptable for disposal or reuse as the Town of Elma desires, as a result of discharge of wastewaters at the above-prescribed concentration limitations;
 - (4) Municipal employees or the public will be endangered; or
 - (5) Air pollution and/or groundwater pollution will be caused.
- B. The limitations on wastewater strength or mass discharge shall be recalculated not less frequently than once every five years. The results of these calculations shall be reported to the Town of Elma Board. This chapter shall then be amended appropriately. Any issued industrial wastewater discharge permits which have limitations based directly on any limitations, which were changed shall be revised and amended, as appropriate.

§ 115-88. Access to user's records.

The Superintendent shall have the authority to copy any record related to wastewater discharges to the POTW.

§ 115-89. Dilution.

- A. Except where expressly authorized to do so by an applicable pretreatment standard, no user shall ever increase the use of process water or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard.
- B. Dilution flow shall be considered to be inflow.

§ 115-90. Grease, oil, and sand interceptors.

Grease, oil, and sand interceptors shall be provided, when, in the opinion of the Superintendent, they are necessary for the proper handling of wastewater containing excessive amounts of grease, flammable substances, sand, or other harmful substances; except that such interceptors shall not be required for private living quarters or living units. All interceptors shall be of type and capacity approved by the Superintendent and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be monitored by the Town, cleaned and repaired regularly as determined by the Town, by the owner, at his expense.

§ 115-91. Solid waste grinders.

Solid waste grinders at or serving commercial establishments, institutions or industries shall not discharge into the Town of Elma POTW if there is a combined sewer overflow (CSO) on the sewer lines conveying the waste to the POTW treatment plant.

§ 115-92. Rejection of wastewater.

The Town of Elma Board may reject a user's wastewater, on recommendation of the Superintendent, when it is

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has been determined that the wastewater contains substances or possesses characteristics which have a deleterious effect on the POTW and its processes, or on the receiving water, or which constitute a public nuisance or hazard. See § 115-120. § 115-92

ARTICLE X

Discharge Permits and Pretreatment Requirements**§ 115-93. Wastewater discharge reports.**

As a means of determining compliance with this chapter, with applicable SPDES permit conditions, and with applicable state and federal law, each industrial user shall be required to notify the Superintendent of any new or existing discharges to the POTW by submitting a completed industrial chemical survey (ICS) form and a completed industrial wastewater survey (IWS) form to the Superintendent. The Superintendent may require any user discharging wastewater into the POTW to file wastewater discharge reports and to supplement such reports as the Superintendent deems necessary. All information shall be furnished by the user in complete cooperation with the Superintendent.

§ 115-94. Notification to industrial users.

The Superintendent shall, from time to time, notify each industrial user of applicable pretreatment standards, and of other applicable requirements under Section 204(B) and Section 405 of the Clean Water Act, and Subtitles C and D of RCRA.

§ 115-95. Wastewater discharges.

No significant industrial user shall discharge wastewater to the POTW without having a valid wastewater discharge permit, issued by the Superintendent. Significant industrial users shall comply fully with the terms and conditions of their permits in addition to the provisions of this chapter. Violation of a permit term or condition is deemed a violation of this chapter.

§ 115-96. Wastewater discharge permits required for significant industrial users.

All significant industrial users proposing to connect to or to discharge to the POTW shall obtain a wastewater discharge permit before connecting to or discharging to the POTW. Existing significant industrial users shall make application for a wastewater discharge permit within 30 days after the effective date of this chapter, and shall obtain such a permit within 90 days after making application.

§ 115-97. Other industrial users.

The Superintendent may issue wastewater discharge permits to other industrial users of the POTW.

§ 115-98. Discharge permits to storm sewers not authorized. [Amended 12-19-2007 by L.L. No. 3-2007]

The Town of Elma does not have the authority to issue permits for the discharge of any wastewater to a storm sewer. Wastewater shall not be discharged to the MS4, except as provided in § 115-167A of this chapter.

§ 115-99. Application for wastewater discharge permits.

A. Industrial users required to obtain a wastewater discharge permit shall complete and file with the Superintendent an application in the form prescribed by the Town of Elma. The application shall be accompanied by a fee, as set forth in § 115-146. In support of any application, the industrial user shall submit, in units and terms appropriate for evaluation, the following information:

- (1) Name, address, and location (if different from the address).
- (2) SIC code of both the industry and any categorical processes.
- (3) Wastewater constituents and characteristics including but not limited to those mentioned in Article X of this chapter and which are limited in the appropriate categorical standard, as determined by a reliable

§ 115-99 analytical laboratory approved by the NYSDOH. Sampling and analysis shall be performed in accordance with standard methods. § 115-100

- (4) Time and duration of the discharge.
- (5) Average daily peak wastewater flow rates, including daily, monthly, and seasonal variations, if any.
- (6) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, sewer connections, and appurtenances.
- (7) Description of activities, facilities, and plant processes on the premises, including all materials which are or could be discharged to the POTW.
- (8) Each product produced by type, amount, process or processes, and rate of production.
- (9) Type and amount of raw materials processed (average and maximum per day).
- (10) Number and type of employees, and hours of operation, and proposed or actual hours of operation of the pretreatment system.
- (11) The nature and concentration of any pollutants in the discharge which are limited by any county, state, or federal standards, and a statement whether or not the standards are being met on a consistent basis and if not whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet all applicable standards.
- (12) If additional pretreatment and/or O&M will be required to meet the standards, then the industrial user shall provide the shortest schedule to accomplish such additional treatment and/or O&M. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:
 - (a) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable Pretreatment Standards (such events include hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, beginning operation, and beginning routine operation).
 - (b) No increment referred to in Subsection A(12) above shall exceed nine months, nor shall the total compliance period exceed 18 months.
 - (c) No later than 14 calendar days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the Superintendent including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return to the established schedule. In no event shall more than nine months elapse between such progress reports to the Superintendent.
- (13) Any other information as may deemed by the Superintendent to be necessary to evaluate the permit application.

B. The Superintendent will evaluate the data furnished by the industrial user and may require additional information. After evaluation and acceptance of the data furnished, the Town of Elma may issue a wastewater discharge permit subject to terms and conditions provided herein.

§ 115-100. Permit modifications.

A. Wastewater discharge permits may be modified by the Superintendent, upon 30 days' notice to the permittee,

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for just cause. Just cause shall include, but not be limited to:

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- (1) Promulgation of an applicable National Categorical Pretreatment Standard;
- (2) Revision of or a grant of a variance from such categorical standards pursuant to 40 CFR 403.13;
- (3) Changes in general discharge prohibitions and local limits as per § 115-86 of this chapter;
- (4) Changes in processes used by the permittee, or changes in discharge volume or character;
- (5) Changes in design or capability of any part of the POTW;
- (6) Discovery that the permitted discharge causes or contributes to pass-through or interference; and
- (7) Changes in the nature and character of the sewage in the POTW as a result of other permitted discharges.

- B. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance as set forth in § 115-99A(12)(a).

§ 115-101. Permit conditions.

Wastewater discharge permits shall be expressly subject to all the provisions of this chapter, and all other applicable regulations, user charges and fees established by the Town of Elma. Permits may contain the following:

- A. Limits on the average and maximum rate and time of discharge, or requirements for flow regulation and equalization.
- B. Limits on the average and maximum wastewater constituents and characteristics, including concentration or mass discharge limits.
- C. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW.
- D. Requirements for installation and maintenance (in safe condition) of inspection and sampling facilities.
- E. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
- F. Compliance schedules.
- G. Requirements for submission of technical reports or discharge reports.
- H. Requirements for maintaining and retaining plant records relating to wastewater discharge, as specified by the Town of Elma, and affording the Superintendent access thereto.
- I. Requirements for notification of the Town of Elma of any new introduction of wastewater constituents or of any substantial change in the volume or character of the wastewater constituents being introduced into the POTW.
- J. Requirements for the notification of the Town of Elma of any change in the manufacturing and/or pretreatment process used by the permittee.
- K. Requirements for notification of excessive, accidental, or slug discharges.
- L. Other conditions as deemed appropriate by the Town of Elma to ensure compliance with this chapter and state and federal laws, rules, and regulations.

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§ 115-102. Permit duration.

Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than five years.

§ 115-103. Permit reissuance.

The user shall apply for permit reissuance a minimum of 180 days prior to the expiration of the user's existing permit. The terms and conditions of the permit may be subject to modification by the Superintendent during the term of the permit, as limitations or requirements, as identified in § 115-100, or other just cause exists. The user shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of the change. Any changes or new conditions in the reissued permit shall include a reasonable time schedule for compliance as established in § 115-98A(12)(a).

§ 115-104. Permit transfer.

Wastewater discharge permits are issued to a specific user for a specific operation or discharge at a specific location. A wastewater discharge permit shall not be reassigned, transferred, or sold to a new owner, new user, different premises, or a new or changed operation.

§ 115-105. Permit revocation.

Wastewater discharge permits may be revoked for the following reasons: falsifying self-monitoring reports, tampering with monitoring equipment, refusing to allow the Superintendent timely access to the industrial premises, failure to meet effluent limitations, failure to pay fines, failure to pay user charges, and failure to meet compliance schedules.

§ 115-106. Public notification.

The Town of Elma will publish in the Town of Elma official daily newspaper(s) informal notice of intent to issue a wastewater discharge permit at least 14 days prior to issuance.

§ 115-107. Report requirements for permittee.

- A. The reports or documents required to be submitted or maintained under this section shall be subject to:
 - (1) The provisions of 18 U.S.C. § 1001 relating to fraud and false statements;
 - (2) The provisions of Sections 309(c)(4) of the Act, as amended, governing false statements, representation or certification; and
 - (3) The provisions of Section 309(c)(6) of the Act, as amended, regarding corporate officers.
- B. Baseline monitoring report. Within 180 days after promulgation of an applicable Federal Categorical Pretreatment Standard, a user subject to that standard shall submit to the Superintendent the information required by Subsection A(8) and (9) of § 115-99.
- C. Ninety-day compliance report. Within 90 days following the date for final compliance with applicable pretreatment standards, or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to pretreatment standards and requirements shall submit, to the Superintendent, a report indicating the nature and concentration of all pollutants in the discharge, from the regulated process, which are limited by pretreatment standards and requirements, and the average and maximum daily flow for these process units in the user's facility which are limited by such pretreatment standards and requirements. The report shall state whether the applicable pretreatment standards and requirements are being met on a consistent basis, and, if not, what additional O&M and/or pretreatment is

§ 115-107 necessary to bring the user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user and certified to by a qualified professional. § 115-109

D. Periodic compliance reports.

- (1) Any user subject to a pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the Superintendent, during the months of June and December, unless required more frequently in the pretreatment standard or by the Superintendent, a report indicating the nature and concentration of pollutants in the effluent which are limited by such pretreatment standards. In addition, this report shall include a record of all daily flows which, during the reporting period, exceeded the average daily flow reported in § 115-99. At the discretion of the Superintendent, and in consideration of such factors as local high- or low-flow rates, holidays, budget cycles, etc., the Superintendent may agree to alter the months during which the above reports are to be submitted, however, no fewer than two reports shall be submitted per year.
- (2) The Superintendent may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements or in other cases where the imposition of mass limitations are appropriate. In such cases, the report required by § 115-107D(1) shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user. These reports shall contain the results of discharge sampling and analysis, including the flow and the nature and concentration, or production and mass, where requested by the Superintendent, of pollutants contained therein, which are limited by the applicable pretreatment standard. All analyses shall be performed in accordance with standard methods by a laboratory certified by NYSDOH to perform the analyses.

E. Violation report. If sampling performed by the user indicates a violation of this chapter and/or the user's discharge permit, the user shall notify the Superintendent within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Superintendent within 30 days after becoming aware of the violation. The user is not required to resample if the POTW performs monitoring of the user's discharge at least once a month for the parameter which was violated, or if the POTW performs sampling, for the parameter which was violated; between the user's initial sampling and when the user receives the results of this sampling.

F. Other reports. The Superintendent may impose reporting requirements equivalent to the requirements imposed by § 115-107D for users not subject to pretreatment standards.

§ 115-108. Flow equalization.

No person shall cause the discharge of slugs to the POTW. Each person discharging into the POTW greater than 100,000 gallons per day or greater than 5% of the average daily flow in the POTW, whichever is lesser, shall install and maintain, on his property and at his expense, a suitable storage and flow-control facility to insure equalization of flow over a twenty-four-hour period. The facility shall have a capacity for at least 50% of the daily discharge volume and shall be equipped with alarms and a rate of discharge controller, the regulation of which shall be directed by the Superintendent. A wastewater discharge permit may be issued solely for flow equalization.

§ 115-109. Monitoring stations (control manholes).

- A. All significant industrial users and other industrial users whose industrial waste discharge has caused or may cause interference or pass-through shall install and maintain a suitable monitoring station, on their premises at their expense, to facilitate the observation, sampling, and measurement of their industrial wastewater discharge.
- B. If there is more than one street lateral serving an industrial user, the Superintendent may require the

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installation of a control manhole on each lateral.

§ 115-113

- C. The Superintendent may require that such monitoring station(s) include equipment for the continuous measurement and recording of wastewater flow rate and for the sampling of the wastewater. Such station(s) shall be accessibly and safely located, and the industrial user shall allow immediate access, without prior notice, to the station by the Superintendent or his designated representative.

§ 115-110. Proper design and maintenance of facilities and monitoring stations.

Preliminary treatment and flow-equalization facilities or monitoring stations if provided for any wastewater shall be constructed and maintained continuously clean, safe, and continuously operational by the owner at his expense. Where an industrial user has such treatment, equalization, or monitoring facilities at the time this chapter is enacted, the Superintendent may approve or disapprove the adequacy of such facilities. Where the Superintendent disapproves of such facilities and construction of new or upgraded facilities for treatment, equalization, or monitoring are required, plans and specifications for such facilities shall be prepared by a licensed professional engineer and submitted to the Superintendent. Construction of new or upgraded facilities shall not commence until written approval of the Superintendent has been obtained.

§ 115-111. Vandalism and tampering with measuring devices.

No unauthorized person shall negligently break, damage, destroy, uncover, deface, tamper with, prevent access, or render inaccurate, or cause or permit the negligent breaking, damaging, destroying, uncovering, defacing, tampering with, preventing access, or rendering inaccurate to any structure, appurtenance, or equipment which is a part of the Town of Elma POTW, or any measuring, sampling, and/or testing device or mechanism installed pursuant to any requirement under this chapter except as approved by the Superintendent.

§ 115-112. Sampling and analysis.

- A. Sampling shall be performed so that a representative portion of the wastewater is obtained for analysis.
- B. All measurements, tests, and analyses of the characteristics of waters and wastes required in any section of this chapter shall be carried out in accordance with standard methods by a laboratory certified by NYSDOH to perform the analyses. Such samples shall be taken at the approved monitoring stations described in § 115-109, if such a station exists. If an approved monitoring station is not required, then samples shall be taken from another location on the industrial sewer lateral before discharge to the public sewer. Unless specifically requested otherwise, or unless specifically not allowed in federal regulation, samples shall be gathered as flow proportioned (where feasible) composite samples made up of individual samples taken not less than once per hour for the period of time equal to the duration of industrial wastewater discharge during daily operations (including any cleanup shift).

§ 115-113. Accidental discharges; SPCC plan.

- A. Each user shall provide for protection from accidental or slug discharges of prohibited materials or discharges of materials in volume or concentration exceeding limitations of this chapter or of an industrial wastewater discharge permit. Users shall immediately notify the Superintendent of the discharge of wastes in violation of this chapter or any permit. Such discharges may result from:
- (1) Breakdown of pretreatment equipment.
 - (2) Accidents caused by mechanical failure, or negligence.
 - (3) Other causes.
- B. Where possible, such immediate notification shall allow the Superintendent to initiate appropriate countermeasure action at the POTW. The user shall prepare a detailed written statement following any

§ 115-113 § 115-117
accidental or slug discharge, which describes the causes of the discharge and the measures being taken to prevent future occurrences, within five days of the occurrence, and the Superintendent shall receive a copy of such report no later than the fifth calendar day following the occurrence. Analytical results and their interpretation may be appended to the report at a date not exceeding 45 calendar days after the occurrence.

C. When required by the Superintendent, detailed plans and procedures to prevent accidental or slug discharges shall be submitted to the Superintendent for approval. These plans and procedures shall be called a "spill prevention, control, and countermeasure (SPCC) plan." The plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including nonroutine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the POTW of any accidental or slug discharge. Such notification must also be given for any discharge which would violate any provision of the permit and any national prohibitive discharge standard.
- (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

§ 115-114. Posting notices.

In order that the industrial user's employees be informed of the Town of Elma requirements, a notice shall be permanently posted on appropriate bulletin boards within the user's facility advising employees of the Town of Elma requirements and whom to call in case of an accidental discharge in violation of this chapter.

§ 115-115. Sample splitting.

When so requested in advance by an industrial user, and when taking a sample of industrial wastewater, the Town of Elma representative(s) shall gather sufficient volume of sample so that the sample can be split into two nearly equal volumes, each of size adequate for the anticipated analytical protocols including any quality control (QC) procedures. One of the portions shall be given to the representative of the industrial user whose wastewater was sampled, and the other portion shall be retained by the Town of Elma for its own analysis.

§ 115-116. Public access to information maintained by Superintendent.

- A. When requested, the Superintendent shall make available to the public for inspection and/or copying information and data on industrial users obtained from reports, questionnaires, permit applications, permit and monitoring programs, and inspections, unless the industrial user specifically requests, and is able to demonstrate to the satisfaction of the Superintendent, that such information, if made public, would divulge processes or methods of production entitled to protection as trade secrets of the user. Wastewater constituents and characteristics and reports of accidental discharges shall not be recognized as confidential.
- B. Confidential information shall not be made available for inspection and/or copying by the public but shall be disclosed upon written request to governmental agencies, for uses related to this chapter or the SPDES permit, providing that the governmental agency making the request agrees to hold the information confidential, in accordance with state or federal laws, rules and regulations. The Superintendent shall provide written notice to the industrial user of any disclosure of confidential information to another governmental agency.

§ 115-117. Access to property and records.

The Superintendent and other authorized representatives of the Town of Elma, representatives of EPA, NYSDEC,

§ 115-117 NYSDOH, and/or Town of Elma County Health Department, bearing proper credentials and identification, shall be permitted to enter upon all nonresidential properties at all times for the purpose of inspection, observation, sampling, flow measurement, and testing to ascertain a user's compliance with applicable provisions of federal and state law governing use of the Town of Elma POTW, and with the provisions of this chapter. Inspections of residential properties shall be performed in proper observance of the resident's civil rights. Such representative(s) shall have the right to set up, on the user's property or property rented/leased by the user, such devices as are necessary to conduct sampling or flow measurement. Guard dogs shall be under proper control of the user while the representatives are on the user's property or property rented/leased by the user. Such representative(s) shall additionally have access to and may copy any records the user is required to maintain under this chapter. Where a user has security measures in force which would require proper identification and clearance before entry into the premises, the user shall make necessary arrangements so that upon presentation of suitable identification, inspecting personnel will be permitted to enter, without delay, for the purpose of performing their specific responsibilities. § 115-120

§ 115-118. Access to easements.

The Superintendent, bearing proper credentials and identification, shall be permitted to enter all private premises through which the Town of Elma holds an easement for the purpose of inspection, observation, measurement, sampling, repair, and maintenance of any portion of the Town of Elma public sewer system lying within the easement. All entry and subsequent work on the easement shall be done in accordance with the terms of the easement pertaining to the private premises involved.

§ 115-119. Liability of property owner.

During the performance on private premises of inspections, sampling, or other similar operations referred to is §§ 115-117 and 115-118, the inspectors shall observe all applicable safety rules established by the owner or occupant of the premises. The owner and/or occupant shall be held harmless for personal injury or death of the inspector and the loss of or damage to the inspector's supplies and/or equipment; and the inspector shall indemnify the owner and/or occupant against loss or damage to property of the owner or occupant by the inspector and against liability claims asserted against the owner or occupant for personal injury or death of the inspector or for loss of or damage to the inspector's supplies or equipment arising from inspection and sampling operations, except as such may be caused by negligence or failure of the owner or occupant to maintain safe conditions.

§ 115-120. Special agreements.

- A. Nothing in this article shall be construed as preventing any special agreement or arrangement between the Town of Elma and any user of the POTW whereby wastewater of unusual strength or character is accepted into the POTW and specially treated, subject to any payments or user charges, as may be applicable. In entering into such a special agreement, the Town of Elma Board shall consider whether the wastewater will:
 - (1) Pass-through or cause interference;
 - (2) Endanger the public municipal employees;
 - (3) Cause violation of the SPDES permit;
 - (4) Interfere with any purpose stated in § 115-2; and
 - (5) Prevent the equitable compensation to the Town of Elma for wastewater conveyance and treatment, and sludge management and disposal.
- B. No discharge which violates the federal pretreatment standards will be allowed under the terms of such special agreements.
- C. No agreement shall be entered into without the user having been issued and presently having a permit to

§ 115-120 discharge wastes into the POTW for treatment and disposal. Additionally the user shall be in compliance with § 115-120 all conditions in the permit and shall not be in arrears in any charges due to the Town of Elma before the agreement is entered into. The Town of Elma Board may condition the agreement.

ARTICLE XI
Enforcement and Penalties⁵⁰

§ 115-121. Enforcement response plan.

- A. The Superintendent shall prepare an enforcement response plan. The enforcement response plan, in a step-by-step fashion, shall outline the procedures to be followed to identify, document, and respond to violations by users of the POTW. All violations by users of the POTW shall be met with some type of enforcement response. The response shall be comprehensive and effective.
- B. The enforcement response plan shall:
 - (1) Describe how the Superintendent will investigate instances of noncompliance.
 - (2) Describe the types of escalated enforcement actions that the Superintendent will take in response to all anticipated types of user violations and the time periods within which to initiate and follow-up these actions.
 - (3) Adequately reflect the Town of Elma Board's responsibility to enforce all applicable standards and requirements.
- C. The enforcement response plan shall contain:
 - (1) Criteria for scheduling periodic inspection and/or sampling visits to POTW users.
 - (2) Forms and guidelines for documenting compliance data in a manner which will enable the information to be used as evidence.
 - (3) Systems to track due dates, compliance schedule milestones, and pending enforcement actions.
 - (4) Criteria, responsible personnel, and procedures to select and initiate an enforcement action.
- D. The range of appropriate enforcement actions shall be based on the nature and severity of the violation and other relevant factors, such as: magnitude of the violation, duration of the violation, effect of the violation on the receiving water, effect of the violation on the POTW, effect of the violation on the health and safety of the POTW employees, compliance history of the user, good faith of the user, and shall promote consistent and timely use of enforcement remedies.
- E. The Town of Elma Board shall approve the enforcement response plan. The enforcement response plan shall be reviewed at least every five years.

§ 115-121.1. Enforcement of Article XV, Storm Sewers. [Added 12-19-2007 by L.L. No. 3-2007]

This article shall not apply to violations of Article XV of this chapter, which shall be enforced as provided for therein.

§ 115-122. Notification of violation.

Whenever the Superintendent finds that any user has violated or is violating this chapter, or any wastewater discharge permit, order, prohibition, limitation, or requirement permitted by this chapter, the Superintendent may serve upon such person a written notice stating the nature of the violation. Within 10 calendar days of the date the Superintendent mails the notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof shall be submitted to the Superintendent by the user. The correction and prevention plan shall

⁵⁰. Editor's Note: This article is under review by NYSDEC and may be revised following review. The Municipal Attorney or officer responsible for drafting this chapter should carefully review the provisions in this article of the model and make any suitable adjustments to maintain consistency with local and state law.

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include specific actions. Submission of this plan in no way relieves the user of liability for any violations caused by the user before or after receipt of the notice of violation. § 115-126

§ 115-123. Consent orders.

The Superintendent is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the user responsible for the noncompliance. Such orders shall include specific action to be taken by the user to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order.

§ 115-124. Administrative or compliance orders.

- A. When the Superintendent finds that a user has violated or continues to violate this chapter or a permit or administrative order issued thereunder, he may issue an administrative order to the user responsible for the discharge directing that, following a specified time period, sewer service shall be discontinued, severed and abated unless the violation is corrected and that there is no reoccurrence of the violation. Administrative orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the installation of pretreatment technology, additional self-monitoring, and management practices.
- B. The user may, within 15 calendar days of receipt of such order, petition the Superintendent to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:
 - (1) Reject any frivolous petitions;
 - (2) Modify or suspend the order; or
 - (3) Order the petitioner to show cause in accordance with § 115-129 and may as part of the show-cause notice request the user to supply additional information.

§ 115-125. Administrative fines.

- A. Notwithstanding any other section of this chapter, any user who is found to have violated any provision of this chapter, or a wastewater discharge permit or administrative order issued hereunder, shall be fined in an amount not to exceed \$1,000 per violation. Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation.
- B. The user may, within 15 calendar days of notification of the Superintendent's notice of such fine, petition the Superintendent to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:
 - (1) Reject any frivolous petitions;
 - (2) Modify or suspend the fine; or
 - (3) Order the petitioner to show cause in accordance with § 115-129 and may as part of the show-cause notice request the user to supply additional information.

§ 115-126. Cease and desist orders.

- A. When the Superintendent finds that a user has violated or continues to violate this chapter or any permit or administrative order issued hereunder, the Superintendent may issue an administrative order to cease and desist all such violations and direct those persons in noncompliance to:
 - (1) Comply forthwith.

- § 115-126 (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations or terminating the discharge. § 115-129
- B. The user may, within 15 calendar days of the date the Superintendent mails notification of such order, petition the Superintendent to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:
- (1) Reject any frivolous petitions;
 - (2) Modify or suspend the order; or
 - (3) Order the petitioner to show cause in accordance with § 115-129 and may as part of the show-cause notice request the user to supply additional information.

§ 115-127. Termination of permit.

- A. Any user who violates the following conditions of this chapter or a wastewater discharge permit or administrative order, or any applicable or state and federal law, is subject to permit termination:
- (1) Violation of permit conditions or conditions of an administrative order;
 - (2) Failure to accurately report the wastewater constituents and characteristics of its discharge;
 - (3) Failure to report significant changes in operations or wastewater constituents and characteristics;
 - (4) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or
 - (5) Failure to pay administrative fines, fees or user charges. Noncompliant industrial users will be notified, by registered mail, of the proposed termination of their wastewater permit.
- B. The user may, within 15 calendar days of the date the Superintendent mails such notification, petition the Superintendent to permit continued use of the POTW by the user: Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:
- (1) Reject any frivolous petitions; or
 - (2) Order the petitioner to show cause in accordance with § 115-129 and may as part of the show-cause notice request the user to supply additional information.

§ 115-128. Water supply severance.

- A. Whenever a user has violated or continues to violate the provisions of this chapter or an order or permit issued hereunder, water service to the user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.
- B. The user may, within 15 calendar days of severance, petition the Superintendent to reconnect water supply service. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:
- (1) Reject any frivolous petitions;
 - (2) Reconnect the water supply; or
 - (3) Order the petitioner to show cause in accordance with § 115-129 and may as part of the show-cause notice request the user to supply additional information.

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§ 115-129. Show-cause hearing.

- A. The Superintendent may order any user appealing administrative remedies for violations of this chapter to show cause, before the Town of Elma Board, why an enforcement action, initiated by the Superintendent, should not be taken. A notice shall be served on the user specifying the time and place of a hearing to be held by the Town of Elma Board regarding the violation, the reasons why the action is to be taken, the proposed enforcement action, and directing the user to show cause before the Town of Elma Board why the proposed enforcement action should not be taken. The notice of the hearing shall be served at least 10 calendar days before the hearing in accordance with § 115-131 of this article. Service shall be made on any principal or executive officer of a user's establishment or to any partner in a user's establishment. The notice of the hearing shall be served at least 10 calendar days before the hearing, in accordance with § 115-131.
- B. The Town of Elma Board may itself conduct the hearing, or may designate any of its members or any officer or employee of the Town of Elma to conduct the hearing:
 - (1) Issue, in the name of the Town of Elma Board, notices of hearings requesting the attendance and testimony of witnesses, and the production of evidence relevant to any matter involved in such hearings;
 - (2) Take the evidence;
 - (3) Take sworn testimony; and
 - (4) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the Town of Elma Board for action thereon.
- C. After the Town of Elma Board has reviewed the evidence and testimony, it may order the user to comply with the Superintendent's order or fine, modify the Superintendent's order or fine, or vacate the Superintendent's order or fine.

§ 115-130. Failure of user to petition Superintendent.

In the event the Superintendent issues any administrative order, terminates the user's permit, or makes any fine as set forth in this article, and the user fails, within the designated period of time set forth, to petition the Superintendent, as provided in appropriate sections of this article, the user shall be deemed in default and its rights to contest the administrative order or the fine shall be deemed waived.

§ 115-131. Notice.

The notices, orders, petitions, or other notification which the user or Superintendent shall desire or be required to give pursuant to any sections of this chapter shall be in writing and shall be served personally or sent by certified mail or registered mail, return receipt requested, postage prepaid, and the notice, order, petition, or other communication shall be deemed given upon its mailing as provided herein. Any notice, administrative order, or communication mailed to the user pursuant to the sections of this chapter shall be mailed to the user where the user's effluent is discharged into transmission lines to the Town of Elma's POTW. Any notice, petition, or other communication mailed to the Superintendent shall be addressed and mailed to the Town of Elma Hall of the Town of Elma.

§ 115-132. Right to choose multiple remedies.

The Superintendent shall have the right, within the Superintendent's sole discretion, to utilize any one or more appropriate administrative remedies set forth in this article. The Superintendent may utilize more than one administrative remedy established pursuant to this article, and the Superintendent may hold one show-cause hearing combining more than one enforcement action.

§ 115-133. Civil actions for penalties.

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- A. Any person who violates any of the provisions of or who fails to perform any duty imposed by this chapter, or any administrative order or determination of the Superintendent promulgated under this chapter, or the terms of any permit issued hereunder, shall be liable to the Town of Elma for a civil penalty not to exceed \$1,000 for each such violation, to be assessed after a hearing (unless the user waives the right to a hearing) held in conformance with the procedures set forth in this article. Each violation shall be separate and distinct violation, and in the case of continuing violation, each day's continuance thereof shall be deemed a separate and distinct violation. Such penalty may be recovered in an action brought by the Town of Elma Attorney, or his designated attorney, at the request of the Superintendent in the name of the Town of Elma, in any court of competent jurisdiction giving preference to courts local to the Town of Elma. In addition to the above described penalty, the Superintendent may recover all damages incurred by the Town of Elma from any persons or users who violate any provisions of this chapter, or who fail to perform any duties imposed by this chapter or any administrative order or determination of the Superintendent promulgated under this chapter, or the terms of any permit issued hereunder. In addition to the above-described damages, the Superintendent may recover all reasonable attorney's fees incurred by the Town of Elma in enforcing the provisions of this article, including reasonable attorney's fees incurred in any action to recover penalties and damages, and the Superintendent may also recover court costs, and other expenses associated with the enforcement activities, including sampling and monitoring expenses.
- B. In determining the amount of civil penalty, the court shall take into account all relative circumstances, including, but not limited to the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other relative factors as justice may require.
- C. Such civil penalty may be released or compromised by the Superintendent before the matter has been referred to the Town of Elma Attorney, and where such matter has been referred to the Town of Elma Attorney, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the Town of Elma Attorney, with the consent of the Superintendent.

§ 115-134. Court orders.

- A. In addition to the power to assess penalties as set forth in this article, the Superintendent shall have the power, following the hearing held in conformance with the procedures set forth in this article, to seek an order:
- (1) Suspending, revoking, or modifying the violator's wastewater discharge permit; or
 - (2) Enjoining the violator from continuing the violation.
- B. Any such court order shall be sought in an action brought by the Town of Elma Attorney, at the request of the Superintendent, in the name of the Town of Elma, in any court of competent jurisdiction giving precedence to courts local to the Town of Elma.
- C. The Town of Elma Attorney, at the request of the Superintendent, shall petition the court to impose, assess, and recover such sums imposed according to this article. In determining amount of liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

§ 115-135. Criminal penalties.

- A. Any person who willfully violates any provision of this chapter or any final determination or administrative order of the Superintendent made in accordance with this article shall be guilty of a Class A Misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$500 nor more than \$1,000, or imprisonment not to exceed one year, or both. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct

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offense.

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- B. Any user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter, or wastewater permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this chapter shall be guilty of a Class A Misdemeanor and, upon conviction, shall be punished by a fine of not more than \$1,000 per violation per day or imprisonment for not more than one year, or both.
- C. No prosecution under this section shall be instituted until after final disposition of a show-cause hearing, if any, was instituted.

§ 115-136. Additional injunctive relief.

Whenever a user has violated or continues to violate the provisions of this chapter or permit or order issued hereunder, the Superintendent, through counsel may petition the court, in the name of the Town of Elma, for the issuance of a preliminary or permanent injunction or both (as may be appropriate) which restrains the violation of or compels the compliance with any order or determination thereunder by the Superintendent.

§ 115-137. Summary abatement.

- A. Notwithstanding any inconsistent provisions of this chapter, whenever the Superintendent finds, after investigation, that any user is causing, engaging in, or maintaining a condition or activity which, in the judgment of the Superintendent, presents an imminent danger to the public health, safety, or welfare, or to the environment, or is likely to result in severe damage to the POTW or the environment, and it therefore appears to be prejudicial to the public interest to allow the condition or activity to go unabated until notice and an opportunity for a hearing can be provided, the Superintendent may, without prior hearing, order such user by notice, in writing wherever practicable or in such other form as practices are intended to be proscribed, to discontinue, abate, or alleviate such condition or activity, and thereupon such person shall immediately discontinue, abate, or alleviate such condition or activity; or where the giving of notice is impracticable, or in the event of a user's failure to comply voluntarily with an emergency order, the Superintendent may take all appropriate action to abate the violating condition. As promptly as possible thereafter, not to exceed 15 calendar days, the Superintendent shall provide the user an opportunity to be heard, in accordance with the provisions of this article.
- B. If the user is not within the geographic boundaries of the Town of Elma the right of summary abatement to discontinue, abate, or alleviate conditions or activities shall be those prescribed in the intermunicipal agreement.
- C. The Superintendent, acting upon the belief that an emergency exists, shall be indemnified against any personal liability that may arise in the performance of his duties to protect the public health, safety, or welfare, or to preserve the POTW or the environment.

§ 115-138. Delinquent payments.

- A. If there shall be any payments which are due to the Town of Elma, or any department thereof, pursuant to any article or section of this chapter, which shall remain due and unpaid, in whole or in part, for a period of 20 calendar days from the date of billing by the Town of Elma, the same shall constitute a default, and there shall be added to the entire amount of the original bill a penalty equal to 20% of the original bill, and interest shall accrue on the unpaid balance at the rate of 2% per month, retroactive to the date of the original billing.
- B. In the event that there are any sewer taxes, assessments, or other service charges which shall have been delinquent for a period of at least 60 calendar days as of December 15 of any year, the Superintendent shall report the names of the defaulting persons to the Town of Elma Supervisor, the Town of Elma Clerk, the

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Town of Elma Chief Assessor, and the Town of Elma Treasurer on or before December 15 of the same year. The Town of Elma Chief Assessor is hereby directed to add the entire amount of the sewer tax, assessment, or other service charge which shall be in default, plus penalty and interest, as provided for in this chapter, to the real property taxes due and owing to Town of Elma in the next succeeding year, and the Town of Elma Chief Assessor is directed to collect the same in the same manner as real property taxes due and owing to the Town of Elma are collected.

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- C. Where charges are delinquent and the violator is not a resident of the Town of Elma, or is located outside the geographical boundaries of the Town of Elma, then the Town of Elma attorney is authorized to seek recovery of charges, including punitive damages, in a court of competent jurisdiction or make arrangements with the appropriate county where the user is located to add the amount of the sewer assessment or other charges which shall be in default, plus penalty and interest, as provided for in the Law, to the real property taxes due to the county in the next ensuing year.

§ 115-139. Performance bonds.

The Superintendent may decline to reissue a permit to any user which has failed to comply with the provisions of this chapter or any order or previous permit issued hereunder unless such user first files with it a satisfactory bond, payable to the POTW, in a sum not to exceed a value determined by the Superintendent to be necessary to achieve consistent compliance.

§ 115-140. Liability insurance.

The Superintendent may decline to reissue a permit to any user which has failed to comply with the provisions of this chapter or any order or previous permit issued hereunder, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair POTW damage caused by its discharge.

§ 115-141. Informant rewards.

The Superintendent is authorized to pay up to \$500 for information leading to the discovery of noncompliance by a user. In the event that the information provided results in an administrative fine or civil penalty levied against the user, the Superintendent is authorized to disperse up to 10% of the collected fine or penalty to the informant. However, a single reward payment may not exceed \$10,000, including the discovery reward.

§ 115-142. Public notification.

The Superintendent shall provide public notification in the daily newspaper with the largest circulation in the Town of Elma of users which were in significant noncompliance of local or federal pretreatment standards or requirements since the last such notice. The frequency of such notices shall be at least once per year.

§ 115-143. Contractor listings.

- A. Users which have not achieved consistent compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the Town of Elma.
- B. Existing contracts for the sale of goods or services to the Town of Elma held by a user found to be in significant violation with pretreatment standards may be terminated at the discretion of the Town of Elma Board.

ARTICLE XII
Charges

§ 115-144. Normal sewage service charges.

All persons discharging or depositing wastes into the public sewers shall pay a sewer service charge proportional to the liquid volume of waste so deposited, which charge shall be collected as a sewer rent.

§ 115-145. Surcharge for abnormal sewage.

All persons discharging or depositing wastes with concentrations in excess of the pollutant concentrations in normal sewage shall pay a surcharge.

§ 115-146. Total sewer service charge.

The total sewer service charge, (which shall be called the "user charge"), is comprised of two parts, as follows:

$$UC(t) = UC(n) + UC(an)$$

Where:

UC(t) = Total user charge for POTW operation and maintenance

UC(n) = User charge associated with normal sewage

UC(an) = User charge associated with abnormal sewage

§ 115-147. Segmenting POTW.

The service area of the POTW may be segmented to assist in a fair distribution of user charges, especially if there is a pump station serving a segment.

§ 115-148. Measurement of flow.

The volume of flow to be used in computing sewer service charges and abnormal sewage surcharges shall be based upon metered water consumption as shown on the records of meter readings maintained by the Town of Elma Water Department. In the event that a person discharging wastes into the POTW produces evidence to the Superintendent demonstrating that a substantial portion of the total amount of metered water does not reach the POTW, then the Superintendent shall either establish a percentage of the total metered water to be used as a basis for such computations, or direct the installation of appropriate flow-measuring (and totalizing) devices to measure and record the actual amount of flow into the POTW. In the event that a person discharging wastes into the POTW procures all or part of his water supply from unmetered sources, the Superintendent shall either direct the installation of water meters on the other sources of water supply, or direct the installation of appropriate flow-measuring devices to measure and record the actual amount of flow into the POTW. Any water meters and/or flow-measuring devices installed pursuant to this section shall be of a type and design acceptable to the Superintendent and shall be installed, maintained, and periodically tested as required by the Superintendent, at the owner's expense. All such meters and/or flow-measuring devices shall be subject to periodic inspection, testing, and reading by the Superintendent. Any person discharging wastes into the POTW may install a flow-measuring device at his option, of the type, design, installation, and maintenance standards of the Superintendent, at the owner's expense.

§ 115-149. Billing period.

The billing period shall be monthly for industrial and bimonthly for nonindustrial users.

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§ 115-150. Pretreatment program costs.

The additional charges and fees associated with the operation of the pretreatment program shall be assessed the user, and include:

- A. Reimbursement of costs of setting up and operating the pretreatment program;
- B. Issuing permits;
- C. Monitoring inspections, and surveillance procedures;
- D. Costs of equipment and supplies;
- E. Reviewing accidental discharge procedures;
- F. Construction inspections;
- G. Filing appeals;
- H. Application for consistent removal status as outlined in 40 CFR 403; and
- I. Other reasonable expenses to carry out the program to satisfy the requirements of this chapter, the NYSDEC, and the federal government.

§ 115-151. Charges for trucked and hauled wastes.

The charge for treatment and disposal of trucked or hauled waste which has been introduced into the POTW shall be as established by the Town of Elma Board. The manner of determining the volume dumped shall be at the discretion of the Superintendent.

§ 115-152. Capital recovery.

The Town of Elma may institute an equitable procedure for recovering the costs of any capital improvements of those parts of the POTW which collect, pump, treat, and dispose of industrial wastewaters from those persons discharging such wastewaters into the POTW.

§ 115-153. Collection of charges.

Provisions of Article XI of this chapter relating to the collection of penalties shall apply to the collection of sewer service charges and abnormal sewage service surcharges, unless where otherwise provided by application of the Sewer Rent Law by the Town of Elma.

§ 115-154. Fiscal year for system.

The POTW shall be operated on the basis of a fiscal year commencing on the first day of January and ending on the 31st day of December.

§ 115-155. Impact fees.

The Town of Elma (Board) shall have the authority to impose impact fees on new development, which development may:

- A. Cause enlargement of the service area of the POTW; and
- B. Cause increased hydraulic and/or treatment demands on the POTW.

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§ 115-156. Use of revenues.

Revenues derived from user charges and associated penalties and impact fees shall be credited to a special fund. Monies in this fund shall be used exclusively for the following functions:

- A. For the payment of the operation and maintenance, including repair and replacement costs of the Town of Elma POTW;
- B. For the discovery and correction of inflow and infiltration;
- C. For the payment of interest on and the amortization of or payment of indebtedness which has been or shall be incurred for the construction or extension of the Town of Elma POTW; and
- D. For the extension, enlargement, replacement of, and/or additions to the Town of Elma POTW, including any necessary appurtenances.

§ 115-157. Records and accounts.

- A. The Town of Elma shall maintain and keep proper books of records and accounts for the POTW, separate from all other records and accounts, in which shall be made full and correct entries of all transactions relating to the POTW. The Town of Elma will cause an annual audit of such books of record and account for the preceding fiscal year to be made by a recognized independent certified public accountant, and will supply such audit report to authorized officials, and the public, on request.
- B. In conjunction with the audit, there shall be an annual review of the sewer charge system to determine if it is adequate to meet expenditures for all programs for the coming year.
- C. Classification of old and new industrial users should also be reviewed annually.
- D. The Town of Elma shall maintain and carry insurance on all physical properties of the POTW, of the kinds and in the amounts normally carried by public utility companies and municipalities engaged in the operation of sewage disposal systems. All moneys received for losses under any such insurance policies shall be applied solely to the replacement and restoration of the property damaged or destroyed.

ARTICLE XIII
Public Disclosure of POTW Operation

§ 115-158. POTW operations open to the public.

It shall be the policy of the Town of Elma (Board) to conduct all business with full disclosure to the public.

§ 115-159. Procedural requirements available.

The nature and requirements of all formal procedures for applying for a permit and for requesting a permit under this chapter and for requesting a hearing shall be formulated by the Town of Elma and be made available to any resident of the Town of Elma upon request.

§ 115-160. Validity through public inspection.

The Town of Elma shall formulate procedures to make available to the public for inspection such orders, statements of policy, and interpretations used by the Town of Elma in administration of this chapter. No rule, regulation, or civil order shall be valid until it has been available for public inspection.

ARTICLE XIV
Conflicts, Severability, Effective Date and Applicability

§ 115-161. Conflicts.

The provisions of any Town of Elma law in conflict with any provision of this chapter are hereby repealed.

§ 115-162. Severability.

Each provision of this chapter is severable from the others, so that if any provision is held to be illegal or invalid for any reason whatsoever, such illegal or invalid provision shall be severed from this chapter which shall nonetheless remain in full force and effect.

§ 115-163. When effective.

This chapter shall take effect 30 days after its filing in the office of the Secretary of State.

§ 115-164. Applicability.

Articles I, II, IV, VIII, XI, XII, XIII and XIV shall apply in all incorporated areas of the Town of Elma. Articles III, V, VI, VII, IX, and X shall apply only in incorporated areas of the Town of Elma which are also within the service area of the POTW.

ARTICLE XV
Storm Sewers
[Added 12-19-2007 by L.L. No. 3-2007]

§ 115-165. Purpose.

The purpose of this article is to provide for the health, safety, and general welfare of the citizens of the Town of Elma through the regulation of nonstormwater discharges to the MS4 to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of contaminants into the MS4 in order to comply with the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02. The objectives of this article are:

- A. To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02;
- B. To regulate the contribution of contaminants to the MS4 since such systems are not designed to accept, process or discharge nonstormwater wastes;
- C. To prohibit illicit connections, activities, and discharges to the MS4;
- D. To establish legal authority to carry out all inspection surveillance, and monitoring procedures necessary to ensure compliance with this article; and
- E. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, contaminated water, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other contaminants into the MS4.

§ 115-166. General provisions.

- A. **Applicability.** This article shall apply to all water entering the MS4 within the Stormwater Management Overlay District generated on any developed or undeveloped lands, unless explicitly exempted by an authorized enforcement agency. This article shall not apply to any part of the MS4 outside the Stormwater Management Overlay District.
- B. **Stormwater Management Overlay District.** The Stormwater Management Overlay District consists of all urbanized areas within the jurisdiction of the Town of Elma, as identified by the United States Census Bureau TIGER data, 2000 Census in two maps, attached hereto, entitled the "Buffalo, NY Urbanized Area Stormwater Entities as Defined by the 2000 Census," dated October 21, 2002, as amended or revised. Such maps and any amendments or revisions thereto are hereby declared to be a part of this chapter and shall be filed at the Elma Town Hall.
- C. **Responsibility for administration.** The CEO shall administer, implement, and enforce the provisions of this article. Such powers granted or duties imposed upon the authorized enforcement official may be delegated, in writing, by the CEO as may be authorized by the Town.
- D. **Conflict.** Where the conditions imposed by any provisions of this article are either more restrictive or less restrictive than comparable conditions imposed by any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.

§ 115-167. Discharge prohibitions.

- A. **Prohibition of illicit discharges.** No person shall discharge or cause to be discharged into the MS4 any materials other than stormwater except as provided below. The commencement, conduct or continuance of any illicit discharge to the MS4 is prohibited except as described as follows:

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- (1) The following discharges are exempt from discharge prohibitions established by this article, unless NYSDEC or the Town has determined them to be substantial contributors of contaminants: water line flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm sewers, uncontaminated pumped groundwater, foundation or footing drains, crawl space or basement sump pumps, air-conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges residential street wash water, water from firefighting activities, and any other water source not containing contaminants. Such exempt discharges shall be made in accordance with an appropriate plan for reducing contaminants.
- (2) Discharges approved, in writing, by the CEO to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the CEO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this article.
- (3) Dye testing in compliance with applicable state and local laws is an allowable discharge, but requires a verbal notification to the CEO prior to the time of the test.
- (4) The prohibition of illicit discharges shall not apply to any discharge permitted under a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of NYSDEC, provided that the discharger is in full compliance with all requirements of the permit waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.

B. Prohibition of illicit connections.

- (1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
- (2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (3) A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4 or allows such a connection to continue.

§ 115-168. Prohibition against activities contaminating stormwater.

- A. Activities that are subject to the requirements of this section are those types of activities that:
 - (1) Cause or contribute to a violation of the Town's MS4 SPDES stormwater discharge permit; or
 - (2) Cause or contribute to the Town being subject to a special condition.
- B. Such activities include improper management of pet waste or any other activity that causes or contributes to violations of the Town's MS4 SPDES permit authorization.
- C. Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the Town's MS4 SPDES stormwater discharge permit authorization, that person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the Town's MS4 SPDES stormwater discharge permit authorization.

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§ 115-169. Prevention, control, and reduction of stormwater contaminants by use of best management practices.

Where the CEO has identified an illicit discharge or an activity contaminating stormwater, as defined in § 115-168, the Town may require implementation of BMPs to control those illicit discharges and activities.

- A. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and nonstructural BMPs.
- B. Any person responsible for a property or premises, which is or may be the source of an illicit discharge, or an activity contaminating stormwater, as defined in § 115-168, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to reduce or eliminate the source of contaminant(s) to the MS4.
- C. Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity to the extent practicable shall be deemed compliance with the provisions of this article.

§ 115-170. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity SPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town prior to the allowing of discharges to the MS4.

§ 115-171. Suspension of access to MS4.

- A. Illicit discharges in emergency situations. The CEO may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of people, or to the MS4. The CEO shall notify the person of such suspension within a reasonable time thereafter, in writing, of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the CEO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to people.
- B. Suspension due to the detection of an illicit discharge. Any person discharging to the MS4 in violation of this article may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The CEO will notify a violator, in writing, of the proposed termination of his/her MS4 access and the reasons therefor. The violator may petition the CEO for a reconsideration and hearing. Access may be granted by the CEO if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the CEO determines, in writing, that the illicit discharge has not ceased or is likely to reoccur. A person commits an offense if the person reinstates MS4 access to the premises terminated pursuant to this article without the prior approval of the CEO.

§ 115-172. Access and monitoring of discharges.

- A. Applicability. This section applies to all facilities that the CEO must inspect to enforce any provision of this article, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this article.
- B. Access to facilities.
 - (1) The CEO shall be permitted to enter and inspect facilities subject to regulation under this article as often as may be necessary to determine compliance with this article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger

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shall make the necessary arrangements to allow access to the CEO.

- (2) Facility operators shall allow the CEO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this article.
- (3) The Town shall have the right to set up on any facility subject to this article such devices as are necessary in the opinion of the CEO to conduct monitoring and/or sampling of the facility's stormwater discharge.
- (4) The Town has the right to require the facilities subject to this article to install monitoring equipment as is reasonably necessary to determine compliance with this article. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- (5) An unreasonable delay in allowing the CEO access to a facility subject to this article is a violation of this article. A person who is the operator of a facility subject to this article commits an offense if the person denies the CEO reasonable access to the facility for the purpose of conducting any activity authorized or required by this article.
- (6) If the CEO has been refused access to any part of the premises from which stormwater is discharged and he/she is able to demonstrate probable cause to believe that there may be a violation of this article or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, then the CEO may seek issuance of a search warrant from any court of competent jurisdiction.

§ 115-173. Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or contaminants discharging into the MS4, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the Town in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Town within three business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§ 115-174. Enforcement; penalties for offenses.

- A. Notice of violation. When the CEO finds that a person has violated a prohibition or failed to meet a requirement of this article, he or she may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
 - (1) The elimination of illicit connections or discharges;
 - (2) That violating discharges, practices, or operations shall cease and desist;
 - (3) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 - (4) The performance of monitoring, analyses, and reporting;
 - (5) That the Town will seek civil remedies or criminal penalties, including the imposition of a criminal fine, as provided in § 115-174B; and

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(6) The implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

B. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

§ 115-175. Appeal of notice of violation.

Any person receiving a notice of violation may appeal the determination of the CEO to the Town Board within 15 days of its issuance, which shall hear the appeal within 30 days after the filing of the appeal and within five days of making its decision, file its decision in the office of the municipal Clerk and mail a copy of its decision by certified mail to the discharger.

§ 115-176. Corrective measures.

- A. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation or in the event of an appeal within five business days of the decision of the municipal authority upholding the decision of the CEO, then the CEO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.
- B. If refused access to the subject private property, the CEO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the CEO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger.

§ 115-177. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. If a person has violated or continues to violate the provisions of this article, the CEO may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

§ 115-178. Alternative remedies.

- A. Where a person has violated a provision of this article, he/she may be given alternative remedies in lieu of a civil penalty, upon recommendation of the Town Attorney and concurrence of the CEO where:
 - (1) The violation was unintentional;
 - (2) The violator has no history of previous violations of this chapter;
 - (3) Environmental damage was minimal;

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(4) The violator acted quickly to remedy violation; and/or

(5) The violator cooperated in investigation and resolution.

B. Alternative remedies may consist of one or more of the following:

(1) Attendance at compliance workshops;

(2) Storm sewer stenciling or storm sewer marking; and/or

(3) River, stream, or creek cleanup activities.

§ 115-179. Violations deemed public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

§ 115-180. Remedies not exclusive.

The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law, and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

Chapter 116
SEX OFFENDERS

§ 115-180

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

§ 115-180

ARTICLE I
Residency Restrictions
[Adopted 4-19-2017 by L.L. No. 2-2017⁵¹]

§ 116-1. Legislative intent and purpose.

The Town Board of the Town of Elma recognizes that one of the highest priorities of local government is the protection of its citizens, especially children and other vulnerable members of its community. The adoption of Megan's Law⁵² by the State of New York has increased public awareness of sexual offenders by requiring them to register with authorities and making such information available to the public. Increasingly, federal and state legislation such as Megan's Law has been enacted in an attempt to meet the compelling interest of protecting the health, safety and welfare of children. The Town Board of the Town of Elma believes that legislation does not fully and adequately address the local concern of protecting the victims and potential victims of sex offenders in the Town of Elma. As a means of addressing that local concern, the Town Board hereby enacts this article restricting sex offenders from residing within the distance specified below of the designated places and/or areas that children traditionally meet and congregate.

§ 116-2. Definitions.

For the purposes of this article, the following shall apply:

CHILD DAY-CARE FACILITY — A licensed and/or registered child care center; group family day-care homes and family day-care homes as defined under the New York State Social Services Law.⁵³

CHILD or CHILDREN — Persons 18 years of age or under.

SEX OFFENDER — Shall have the same meaning as the term defined in § 168-a, Subdivision 1, of the Corrections Law of the State of New York (commonly known as "Megan's Law"); or any other applicable federal or state law, including, but not limited to, the Penal Law of the State of New York.⁵⁴ Except as specifically provided, for the purposes of this chapter, the residency restrictions herein shall be applicable to a sex offender who received a Level 1, 2 or Level 3 designation as defined under Article 6-C of the Corrections Law of the State of New York.

SEX OFFENDER VIOLATION — A violation of any law defined as a "sex offense" in § 168-a, Subdivision 2 of the Corrections Law of the State of New York; or any other applicable federal or state law, including, but not limited to, the Penal Law of the State of New York.

SEX OFFENSE — Shall have the same meaning as that term is defined in § 168-a, Subdivision 2 of the Corrections Law of the State of New York; or any other applicable federal or state law, including, but not limited to, the Penal Law of the State of New York.

§ 116-3. Residency restrictions.

No sex offenders convicted of a sex offender violation as defined herein shall be permitted to reside, live, occupy, acquire by lease, rental agreement or otherwise establish a place of lodging, in real property within 2,000 feet of any community center; boys and girls club; private and public school; athletic fields; playgrounds and parks, including, but not limited to, Creek Road, Village Green and Elma Meadows Park facilities; library facilities; child day-care facilities; recreation facilities open to persons 18 years of age and under; preschool facilities; and/or any other places and/or areas children traditionally meet and congregate, in the Town of Elma unless such a place or residence has been assigned by a supervised release program which provides close supervision of the sex offender's daily activity.

51. Editor's Note: This local law superseded former Art. I, Residency Requirements, adopted 5-3-2006 by L.L. No. 1-2006.

52. Editor's Note: See NY Correct § 168 et seq.

53. Editor's Note: See NY Soc Serv § 1 et seq.

54. Editor's Note: See NY Penal § 1.00 et seq.

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§ 116-4. Mandatory relocation period.

Any sex offender that has received a Level 1, 2 or 3 designation as defined under Article 6-C of the Corrections Law of the State of New York who resides in an area prescribed by this article on the effective date of this article may continue to reside and live in that same location for 60 days from such effective date. His/her continuing to reside and live in that location after that sixty-day period shall be deemed a violation of this article.

§ 116-5. Penalties for offenses.

- A. Any sex offender that has received a Level 1, 2 or 3 designation as defined under Article 6-C of the Corrections Law of the State of New York that relocates, resides, harbors or is in direct violation of § 116-3 shall be served with a violation notice from the Town of Elma. The violation notice shall be served by the local law enforcement agency. The violation notice shall mandate the offender relocate in 10 days or less, and to be in direct compliance with the setbacks in § 116-3. Failure for the offender to relocate within 10 days of notice being served shall constitute immediate appearance ticket for court.
- B. Failure to comply with this article shall be a violation punishable by a fine up to \$1,500 a day and/or 15 days in jail. Each day the sex offender continues to reside or live in an area prescribed by this article after a conviction by the Court shall be deemed a separate offense subject to the penalties set forth in this section.

§ 116-6. Injunctive relief.

Nothing in this article shall prelude the Town Board of the Town of Elma from seeking injunction relief from the court to enforce the provisions of the article to authorize to seek such injunction relief hereby being granted.

§ 116-7. Severability.

If any clause, sentence, paragraph, subdivision or part of this chapter or the application thereof to any person, or circumstances shall be adjudged by any Court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not impair or invalidate the remainder thereof but shall be confined in its operation to the sentences, paragraph, subdivision or part of this chapter or in its application to the person directly involved in the controversy in which such judgment or order shall be rendered.

Chapter 117

SITE PLAN REVIEW

§ 116-7

[HISTORY: Adopted by the Town Board of the Town of Elma 4-16-1986 by L.L. No. 6-1986. Amendments noted where applicable.]

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GENERAL REFERENCES

Planning Board — See Ch. 29.

Subdivision of land — See Ch. 123.

Building construction — See Ch. 52.

Zoning — See Ch. 144.

Stormwater management — See Ch. 120.

§ 117-1. Consideration by Planning Board.

Prior to the issuance of either a building permit or use permit in any zoning district, except for a one- or two-family dwelling, related accessory uses or agricultural uses permitted by right under this chapter and the Town of Elma Zoning Ordinance,⁵⁵ the Building Inspector shall refer the permit applicant to the Planning Board for site plan consideration in accordance with § 274-a of the Town Law and the procedure and standards set forth in this chapter.

55. Editor's Note: See Ch. 144, Zoning.

§ 117-2. Sketch plan conference.

- A. A sketch plan conference between the Planning Board and the applicant shall be held to discuss the applicability of the site plan review and approval procedure to the intended development for which the building or use permit is sought. The Planning Board shall make its determination based upon review of the project's scope and the basic land use and site design concept, as shown by a sketch plan and accompanying statements provided by the applicant and describing at a reasonable level of detail what is proposed.
- B. At the sketch plan conference, the Planning Board shall take one or four actions. It shall:
- (1) Determine that the project is limited in scope, with compatible land use and site design characteristics, thus requiring no further review under this chapter.
 - (2) Approve the project if the data contained on the sketch plan, as submitted, justifies and supports such approval.
 - (3) Determine that the project does require full review under this chapter, based upon its scope and/or land use and site design characteristics, and advise the applicant of preliminary site plan requirements in accordance with § 117-3 of this chapter.
 - (4) Require additional sketch plan information prior to making a determination regarding the applicability of the site plan review and approval procedure.
- C. The Planning Board's determination can be assisted if the applicant can include, as may be applicable, the data discussed below as part of the sketch plan discussion:
- (1) An area map showing the parcel under consideration for site plan review and all properties, subdivisions, streets and easements within 200 feet of the boundaries thereof. Such area map shall be oriented to the nearest street or road intersection and, if the parcel adjoins a state highway, such area map shall additionally be related to state mile markers.
 - (2) A map of site topography at no more than five-foot contour intervals. If general site grades exceed 5% or portions of the site have susceptibility to erosion, flooding or ponding, a soils overlay and a topographic map showing contour intervals of not more than two feet of elevation should additionally be provided.

§ 117-3. Application for preliminary site plan approval.

A. An application for preliminary site plan approval shall be made, in writing, to the Planning Board and shall be accompanied by information drawn from the following checklist, as determined necessary by the Planning Board at the sketch plan conference.

(1) Preliminary site plan checklist. The application shall contain:

- (a) The title of the drawing, including the name and address of the applicant and the person responsible for the preparation of such drawing.
- (b) North arrow, scale and date.
- (c) The boundaries of the property plotted to scale.
- (d) Existing watercourses.
- (e) Soils data, minimally relating to the site the data provided within the Soil Inventory and Interpretive Study for the Town of Elma (May 1982).
- (f) A grading and drainage plan, showing existing and proposed contours at an appropriate interval to be specified by the Planning Board.
- (g) The location, proposed use and height of all buildings.
- (h) The location, design and construction materials of all parking and truck loading areas, with access and egress drives thereto.
- (i) Provision for pedestrian access.
- (j) The location of outdoor storage, if any.
- (k) The location, design and construction materials of all existing or proposed site improvements, including drains, culverts, retaining walls and fences.
- (l) A description of the method of sewage disposal and the location, design and construction materials of such facilities.
- (m) A description of the method of securing public water and the location, design and construction materials of such facilities.
- (n) The location of fire and other emergency zones, including the location of fire hydrants.
- (o) The location, design and construction materials of all energy distribution facilities, including electrical, gas and solar energy.
- (p) The location, size and design and construction materials of all proposed signage.
- (q) The location and proposed development of all buffer areas, including indication of existing vegetative cover.
- (r) The location and design of outdoor lighting facilities.
- (s) Designation of the amount of building area proposed for retail sales or similar commercial activity.
- (t) A general landscaping plan and planting schedule.
- (u) Other elements integral to the proposed development, as considered necessary by the Planning Board, including identification of any state or county permits required for the project's execution.

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- (v) A stormwater pollution prevention plan (SWPPP), if required for the proposed development under Chapter 120 of this Code, together with the recommendation of the Stormwater Management Officer to approve, approve with modifications, or disapprove the SWPPP pursuant to § 120-4B of this Code. **[Added 4-15-2015 by L.L. No. 2-2015]**

- B. Required fee. An application for preliminary site plan review and approval shall be accompanied by a fee, which shall be fixed from time to time by resolution of the Town Board.

§ 117-4. Planning Board review of preliminary site plan.

Planning Board's review of a preliminary site plan shall include, as appropriate, but is not limited to, the following:

A. General considerations:

- (1) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, channelization structures and traffic controls.
- (2) Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
- (3) The location, arrangement, appearance and sufficiency of off-street parking and loading.
- (4) The location, arrangement, size, design and general site compatibility of buildings, lighting and signage.
- (5) The adequacy of water supply and sewage disposal facilities.
- (6) The adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise-detering buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
- (7) In the case of an apartment complex or other multiple dwelling, the adequacy of usable open space for play areas and informal recreation.
- (8) Protection of adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features.
- (9) The adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
- (10) Special attention to the adequacy of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- (11) If a stormwater pollution prevention plan (SWPPP) was submitted in accordance with § 117-3A(1)(v), compliance with the requirements of Chapter 120 of this Code. **[Added 4-15-2015 by L.L. No. 2-2015]**

- B. Consultant review. The Planning Board may consult with the Town Building Inspector, Fire Commissioners, Environmental Commission, Superintendent of Highways, other local and county officials and its designated private consultants, in addition to representatives of federal and state agencies, including, but not limited to, the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.
- C. Public hearing. The Planning Board may conduct a public hearing on the preliminary site plan. If a public hearing is considered desirable by a majority of the members of the Planning Board, such public hearing shall be conducted within 45 days of the receipt of the application for preliminary site plan approval and shall be advertised in a newspaper of general circulation in the Town at least five days before the public hearing.
- D. Required referral. Prior to taking action on the preliminary site plan, the Planning Board shall refer the site plan, when applicable, to the Erie County Department of Environment and Planning for advisory review and a report in accordance with § 239 of the General Municipal Law.

§ 117-5. Planning Board action on preliminary site plan.

- A. Within 60 days of the receipt of an application, together with all data required or requested by the Planning Board for a preliminary site plan approval, the Planning Board shall act on it. If no decision is made within said sixty-day period, the preliminary site plan shall be considered approved. The Planning Board's action shall be in the form of a written statement to the applicant stating whether the preliminary site plan is approved, disapproved or approved with modifications.
- B. The Planning Board's statement may include recommendations of desirable modifications to be incorporated in the final site plan, of which conformance with said modifications shall be considered a condition of approval. If the preliminary site plan is disapproved, the Planning Board's statement will contain the reasons for such findings. In such a case, the Planning Board may recommend further study of the site plan and resubmission to the Planning Board after it has been revised or redesigned.

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§ 117-6. Procedure for final detailed site plan approval.

- A. After receiving approval, with or without modifications, from the Planning Board on a preliminary site plan, the applicant shall submit a final detailed site plan to the Planning Board for approval. If more than six months has elapsed since the time of the Planning Board's action on the preliminary site plan and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review.
- B. The final detailed site plan and accompanying information shall conform substantially to the approved preliminary site plan and accompanying information. They should incorporate any modifications that may have been recommended by the Planning Board in its preliminary review. All such compliances shall be clearly indicated by the applicant on the appropriate submission. **[Amended 4-15-2015 by L.L. No. 2-2015]**
- C. The following additional information shall accompany an application for final detailed site plan approval:
 - (1) A record of application for and approval status of all necessary permits from state and county officials.
 - (2) An estimated project construction schedule.

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§ 117-7. Planning Board action on final detailed site plan. [Amended 4-15-2015 by L.L. No. 2-2015]

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- A. Within 45 days of acceptance of the application for final site plan approval, the Planning Board shall render a decision to the Building Inspector. If no decision is made within the forty-five-day period, the final site plan shall be considered approved.
- B. If a stormwater pollution prevention plan (SWPPP) was submitted to the Town in accordance with the provisions of this chapter, the Planning Board shall not approve the site plan unless the site plan and SWPPP comply with the requirements of Chapter 120 of this Code.
- C. Upon approval of the final site plan and payment by the applicant of all fees and reimbursable costs due to the Town, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward such copy to the Building Inspector. The Building Inspector may then issue the building permit if all other applicable requirements are met.
- D. Upon disapproval of a final site plan, the Planning Board shall so inform the Building Inspector, and the Building Inspector shall deny a building permit to the applicant. The Planning Board shall also notify the applicant, in writing, of its decision and its reasons for disapproval.

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§ 117-8. Reimbursable costs.

Costs incurred by the Planning Board for consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged to the applicant, not to exceed \$50 per acre or fraction thereof. Such reimbursable costs shall be in addition to the fee required in § 117-3B herein.

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§ 117-9. Performance guaranty.

No certificate of occupancy shall be issued until all improvements shown in the site plan are installed or a sufficient performance guaranty has been posted for improvements not yet completed. The sufficiency of such performance guaranty shall be determined by the Planning Board after consultation with the Building Inspector, other local officials or its designated consultants.

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§ 117-10. Inspection of improvements.

The Building Inspector shall be responsible for the overall inspection of site improvements, including coordination with other local officials and agencies, as appropriate.

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§ 117-11. Integration of procedures.

Whenever the particular circumstances of a proposed development require compliance with either another procedure in this chapter or the Town of Elma Zoning Ordinance requirements or the Town Land Subdivision Regulations,⁵⁶ the Planning Board shall attempt to integrate, as appropriate, site plan review as required by this chapter with the procedural and submission requirements for such other compliance.

56. Editor's Note: See Ch. 144, Zoning, and Ch. 123, Subdivision of Land.

Chapter 118

SOCIAL HOST LIABILITY

§ 117-11

[HISTORY: Adopted by the Town Board of the Town of Elma 7-18-2018. Amendments noted where applicable.]

§ 118-1

§ 118-1. Title.

The title of this chapter shall be "Social Host Liability."

§ 118-2. Findings; legislative intent.

- A. The Town Board, pursuant to the police powers delegated to it by the New York State Municipal Home Rule Law, has the authority to enact laws which promote the public health, safety, and general welfare of its residents.
- B. The occurrence of loud or unruly gatherings on private property where alcoholic beverages and/or drugs are served to or consumed by underage persons is harmful to the underage persons themselves and a threat to public health, safety, quiet enjoyment of residential property and general welfare. **[Amended 12-19-2018]**
- C. Underage persons often obtain alcoholic beverages and/or drugs at gatherings held at private residences or at rented residential and commercial premises that are under the control of a person who knows or should know of the underage service and/or consumption. Persons responsible for the occurrence of loud or unruly gatherings on private property over which they have possession or control have failed to ensure that alcoholic beverages and/or drugs are neither served to nor consumed by underage persons at these parties. **[Amended 12-19-2018]**
- D. Landlords have failed to prevent the occurrence or reoccurrence of loud or unruly gatherings, including those where alcoholic beverages and/or drugs are served to or consumed by underage persons, on private property they lease to tenants, which seriously disrupts the quiet enjoyment of neighboring residents. **[Amended 12-19-2018]**
- E. Problems associated with loud or unruly gatherings at which alcoholic beverages and/or drugs are served to or consumed by underage persons are difficult to prevent and deter unless the Police Department has the legal authority to direct the host to disperse the gathering. **[Amended 12-19-2018]**
- F. Control of loud or unruly gatherings on private property where alcoholic beverages and/or drugs are served to or consumed by underage persons is necessary when such activity is determined to be a threat to the peace, health, safety or general welfare of the public. **[Amended 12-19-2018]**
- G. Persons responsible for abetting or tolerating loud or unruly gatherings will be more likely to properly supervise or stop such conduct at gatherings held on property under their possession or control.
- H. In the past and present, law enforcement, fire and other emergency response services personnel have and are required to respond, sometimes on multiple occasions, to loud or unruly gatherings on private property at which alcoholic beverages and/or drugs are served to or consumed by underage persons, and responses to such gatherings result in a disproportionate expenditure of public safety resources by the Town of Elma and delay police responses to regular and emergency calls to the rest of the Town. **[Amended 12-19-2018]**
- I. The intent of this chapter is to protect the public health, safety, quiet enjoyment of residential property, and general welfare, rather than to punish. An ordinance that imposes strict liability on property owners and other responsible persons for the nuisances created by loud and unruly gatherings is necessary to deter and prevent such gatherings. Persons who actively and passively aid, allow or tolerate loud or unruly gatherings shall be held strictly liable for the nuisances created by such gatherings and the costs associated with responding to such gatherings.

§ 118-3. Purpose.

The purposes of this chapter are:

- A. To protect public health, safety and general welfare;
- B. To enforce laws prohibiting the service to and consumption of alcoholic beverages and/or drugs by underage persons; and **[Amended 12-19-2018]**
- C. To reduce the costs of providing police, fire and other emergency response services to loud or unruly gatherings, by imposing a civil fee against social hosts and landowners (including landlords) for the recovery of costs associated with providing law enforcement, fire and other emergency response services to loud or unruly gatherings, including those where alcoholic beverages and/or drugs are served to or consumed by underage persons. **[Amended 12-19-2018]**

§ 118-4. Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

ALCOHOL — Ethyl alcohol, hydrated oxide of ethyl or spirits of wine from whatever source or by whatever process produced.

ALCOHOLIC BEVERAGE — Includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine or beer and which contains 1/2 of 1% or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances.

DRUGS — Any substance such as, including but not limited to, marijuana, heroin, hydrocodone, oxycodone, fentanyl, anabolic steroids and cocaine. **[Added 12-19-2018]**

JUVENILE — Any person under 16 years of age.

LOUD OR UNRULY GATHERING —

A. A party or gathering of two or more persons at or on a residence or other private property upon which loud or unruly conduct occurs. Such loud or unruly conduct includes but is not limited to:

- (1) Excessive noise;
- (2) Excessive traffic;
- (3) Obstruction of public streets or crowds that have spilled into public streets;
- (4) Public drunkenness or unlawful public consumption of alcohol or alcoholic beverages;
- (5) Service to or consumption of alcohol or alcoholic beverages by any underage person, except as permitted by state law;
- (6) Harassments, assaults, fights, domestic violence or other disturbances of the peace;
- (7) Vandalism;
- (8) Litter; and
- (9) Any other conduct which constitutes a threat to public health, safety, quiet enjoyment of residential property or general welfare.

B. A loud or unruly gathering shall constitute a public nuisance.

RESIDENCE OR OTHER PRIVATE PROPERTY — A home, yard, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, whether occupied on a temporary or permanent basis, whether occupied as a dwelling, party or other social function, and whether owned, leased, rented or used with or without compensation.

RESPONSE COSTS — The cost associated with responses by law enforcement, fire and other emergency response providers to loud or unruly gatherings, including but not limited to:

- A. Salaries and benefits of law enforcement, fire or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with loud or unruly gatherings, and the administrative costs attributable to such response(s);
- B. The cost of any medical treatment to or for any law enforcement, fire or other emergency response personnel injured responding to, remaining at or leaving the scene of a loud or unruly gathering;
- C. The cost of repairing any Town equipment or property damage, and the cost of the use of any such equipment, in responding to, remaining at or leaving the scene of a loud or unruly gathering.

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RESPONSIBLE PARTY — Any person, agent, operator, firm, association, organization, partnership, company, corporation, beneficiary, trust, trustee, and all other persons having a legal or equitable interest in the residence or other private property or recorded in the official records of the state, county or municipality as holding title to the property or otherwise having control of the property, including the guardian of the estate of any such person and the executor or administrator of the estate of such person, on whose property a loud or unruly gathering is conducted.

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RESPONSIBLE PERSON —

- A. A person or persons with a right of possession in the residence or other private property on which a loud or unruly gathering is conducted, including, but not limited to:
 - (1) An owner of the residence or other private property;
 - (2) A tenant or lessee of the residence or other private property;
 - (3) The landlord of another person responsible for the gathering; and
 - (4) The person(s) who organizes, supervises, officiates, conducts or controls the gathering or any other person(s) accepting responsibility for such a gathering.
- B. If a responsible person for the gathering is a juvenile, then the parents or guardians of that juvenile and the juvenile will be jointly and severally liable for the response costs incurred pursuant to this chapter. To incur liability for response costs imposed by this chapter, the responsible person for the loud or unruly gathering need not be present at such gathering resulting in the response giving rise to the imposition of response costs. This chapter therefore imposes vicarious as well as direct liability upon a responsible person.

UNDERAGE PERSON — Any person under 21 years of age.

§ 118-5. Penalties for offenses.

- A. It shall be a violation for any responsible person or party to conduct, aid, allow, permit or condone a loud or unruly gathering at a residence or other private property.
- B. Fines.
 - (1) A first violation of this chapter shall be punishable by a fine of \$250 and shall be required to complete a substance abuse education program provided by a certified prevention agency within 90 days of the offense.
 - (2) A second violation of this chapter, at the same residence or other private property or by the same responsible person or party, within a twelve-month period shall be punishable by a fine of \$500.
 - (3) A third or subsequent violation of this chapter, at the same residence or other private property or by the same responsible person or party, within the state, county or twelve-month period shall be punishable by a fine of \$1,000.
- C. The fines prescribed at Subsection B above are in addition to any response costs that may be assessed pursuant to this chapter.
- D. The fine schedule prescribed at Subsection B above is a "rolling schedule," meaning that in calculating the fine payable, the Town Attorney shall count backward starting from the date of the most recent loud or unruly gathering to determine how many prior loud or unruly gatherings have taken place at the residence or other private property in question during the statutory twelve-month period.
- E. A responsible person or party charged with a violation of this chapter is entitled to a summary hearing in Elma Town Court without a jury, and the Court must receive any relevant evidence not legally privileged. Hearsay is admissible. The responsible person or party may cross-examine witnesses and may present evidence on his/her/their behalf. A finding that the responsible person or party has violated any provision of this chapter must be based upon a preponderance of the evidence.

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§ 118-6. Recovery of response costs.

- A. When a law enforcement, fire or other emergency response provider responds to a loud or unruly gathering at a residence or other private property within the Town of Elma within a twelve-month period of a warning given to a responsible person or party for a loud or unruly gathering, all responsible persons or parties shall be jointly and severally liable for the Town's costs of providing response costs for that response and all subsequent responses during the warning period.
- B. When a law enforcement, fire or other emergency response provider official makes an initial response to a loud or unruly gathering at a residence or other private property within the Town of Elma, the official shall inform any responsible person or party for the gathering at the scene that:
 - (1) The official has determined that a loud or unruly gathering exists; and
 - (2) The responsible person or party will be charged for any response costs required for subsequent responses to the scene for a loud or unruly gathering within a twelve-month period.
- C. Only one warning will be given to a responsible person or party pursuant to this section before the Town assesses response service costs pursuant to this chapter. If a responsible person or party cannot be identified at the scene, the official may issue a warning to one or more persons identified in this chapter or subsequently return to the residence or other private property and issue the warning to a then-present responsible person or party. Warnings given to responsible persons or parties who do not reside at the residence or other private property in question shall be delivered by certified mail, return receipt requested.
- D. With the acceptance of this chapter, recovered funds are to be made available to cover the cost of this chapter as calculated at the end of each year based on costs expended by the Police Department. The recovered funds are to be earmarked to the trust in agency account for safety education programs.

§ 118-7. Billing and collection.

- A. The amount of response costs shall be deemed a debt owed to the Town of Elma by the responsible person or party held liable in this chapter for the loud or unruly gathering and, if a juvenile, by the juvenile's parents or guardians. The amount of response costs, including reasonable attorney's fees, shall also be a lien against the property concerned and shall be assessed, levied, and collected like other taxes and assessments; provided, however, that the responsible person or party, including the owner and all other persons having an interest in the property, are provided with notice by way of certified mail, return receipt requested, and mailed within 14 days of the response giving rise to such costs. The notice shall contain the following information:
- (1) The name of the person or party being held liable for the payment of such costs;
 - (2) The address of the residence or other private property where the loud or unruly gathering occurred;
 - (3) The date and time of the response;
 - (4) The law enforcement, fire or emergency service provider who responded;
 - (5) The date and time of any previous warning given pursuant to this chapter and/or previous responses to loud or unruly gatherings at the residence or other private property in question within the previous 12 months; and
 - (6) An itemized list of the response costs for which the person or party is being liable.
- B. The responsible person or party must remit payment of the noticed response costs to the Town of Elma within 30 days of the date of the notice. If no payment is made within 30 days, the response costs, including reasonable attorney's fees, shall be a lien against the property concerned and shall be assessed, levied, and collected like other taxes and assessments; provided, however, that the responsible person or party and all other persons having an interest in the property are provided with notice and an opportunity to be heard before the assessment of any lien against the land.

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§ 118-8. Civil action to collect costs.

The Town of Elma is authorized, after due demand having been made and proper notice having been given, to commence an action at law in any court of competent jurisdiction to collect response costs from the responsible person or party, including the owner and any other person having an interest in the property concerned.

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§ 118-9. Inconsistent provisions; severability.

- A. If a provision of this chapter is found to be inconsistent with any provision of other chapters of the Town Code, the provision or requirement which is the more restrictive or which establishes the higher standard shall prevail. A greater penalty shall not be considered as more restrictive or a higher standard.
- B. If any part, provision, section, subdivision, paragraph or term of this chapter shall be held unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining parts, provisions, sections, subdivisions, paragraphs or terms.

Chapter 118A

SOLAR RENEWABLE ENERGY SYSTEMS

§ 118-9

§ 118-9

[HISTORY: Adopted by the Town Board of the Town of Elma 5-22-2019 by L.L. No. 2-2019. Amendments noted where applicable.]

ARTICLE I
General Provisions

§ 118A-1. Purpose.

The Town finds that restrictions of regulations in regard to the use of land within the Town for solar power projects or private solar projects are appropriate to properly address community impact, concerns or issues in a manner which is meaningful and consistent with the Comprehensive Plan of the Town.

§ 118A-2. Findings.

The Town Board of the Town of Elma (hereinafter referred to as "the Town") presents the following findings:

- A. The Town Board recognizes that solar energy is a clean, readily available and renewable energy source, and the Town intends to accommodate the use of solar energy systems.
- B. However, the Town Board finds a growing need to properly site solar energy systems within the boundaries of the Town to protect residential and business areas and other land uses, to preserve the overall beauty, nature and character of the Town, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town.
- C. Prior to the adoption of this article, no specific procedures existed to address the siting of solar energy systems. Accordingly, the Town Board finds that the promulgation of this article is necessary to direct the location and construction of these systems.
- D. Solar energy systems need to be regulated for removal when no longer utilized.

§ 118A-3. Applicability.

- A. Any solar energy system erected, constructed, modified, or operated in the Town after the effective date of this chapter shall be in compliance with this chapter.
- B. In order to promote innovative design and encourage the inclusion of alternative energy systems within the overall design of a building, solar energy systems determined by the Code Enforcement Officer to be building-integrated photovoltaic (BIPV) systems, as defined herein, are exempt from the requirements of this article. BIPV systems are still required to meet applicable building codes and obtain all necessary permits. The Code Enforcement Officer may request assistance from the Planning Board to determine whether a solar energy system should be considered a BIPV system.
- C. The Town shall not be held liable for any damage incurred to the applicant's/owner's property or existing structures on the property due to the installation of a solar energy system.

§ 118A-4. Definitions.

The following definitions shall apply to this chapter:

APPLICANT — The person or entity filing an application and seeking an approval under this article, including but not limited to, the owner of a solar energy system or a proposed solar energy system project; the operator of solar energy system or a proposed solar energy system project; any person acting on behalf of an applicant, solar energy system or proposed solar energy system. Whenever the term "applicant," "owner," or "operator" is used in this chapter, said term shall include any person acting as an applicant, owner or operator.

BUILDING-INTEGRATED PHOTOVOLTAIC SYSTEM (BIPS) — A combination of photovoltaic building components integrated into any building envelope system, such as vertical facades, including glass and other facade materials, semitransparent skylight systems, roofing materials, and shading over windows.

BUILDING-MOUNTED SOLAR ENERGY SYSTEMS — A solar energy system that is affixed to the side(s) of

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a building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Said system is designed and intended to generate energy primarily for on-site consumption.

GROUND-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system that is anchored to the ground and attached to a pole(s) or other mounting system, detached from any other structure, for the primary purpose of producing electricity primarily for on-site consumption.

LARGE UTILITY-SCALE SOLAR ENERGY SYSTEM — Any solar energy system that is ground mounted and produces energy for the primary purpose of off-site consumption or sale.

PROPERTY OWNER — The person or entity that holds title to the real property.

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM — A solar panel system located on the roof of any legally permitted building or structure for the primary purpose of producing electricity for on-site consumption.

SPECIAL USE PERMIT — A special use permit allows a parcel of land or property to be used in a manner that deviates from normally accepted activities in that area and creates an exception to zoning regulations and ordinances.

§ 118A-5. Use districts.

Subject to the provisions of this article, installation and operation of solar energy systems shall be allowed in the Town as follows:

- A. Rooftop-mounted and building-mounted solar energy systems that produce electricity on site for on-site consumption are permitted as an accessory use in all zoning districts within the Town.
- B. Ground-mounted solar energy systems are not a permitted use except by special use permit.
- C. Large utility-scale solar energy systems are not a permitted use except by special use permit and shall only be considered in Commercial (C3) and Industrial (I) Zones.
- D. Any inconsistent provisions of the Zoning Law⁵⁷ which purport to or may be interpreted so as to allow solar energy systems in other districts are hereby superseded by Subsection B or C.
- E. The provisions of this article shall apply only to solar electricity generation and solar water heating systems.

§ 118A-6. General regulations.

The placement, construction, and major modification of all solar energy systems within the boundaries of the Town shall be permitted only as follows:

- A. All solar energy systems shall adhere to all applicable Town building, plumbing, electrical, and fire codes.
- B. All proposed solar energy systems are required to follow at least the minimum standards set forth by the New York State Building Codes, and all specifications for such systems must be accompanied by a set of drawings stamped by a New York State (NYS) licensed engineer or registered architect.
- C. All solar energy systems are required to obtain a permit from the Town Building Department.
- D. All solar energy systems existing on the effective date of this article shall be allowed to continue usage as they presently exist. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted only on such existing systems. New construction other than routine maintenance shall comply with the requirements of this article.

57. Editor's Note: See Ch. 144, Zoning.

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- E. No solar energy system shall hereafter be used, erected, moved, reconstructed, changed or altered except in adherence to and conformity with the regulations set forth in this article.
- F. Any applications (including variance applications) pending for solar energy systems on the effective date of this article shall be subject to the provisions of this article.
- G. This chapter shall take precedence over any inconsistent provisions of the Zoning Law of the Town of Elma.⁵⁸
- H. This chapter shall not apply to any lot owned by a municipality.
- I. Development and operation of a solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town or other federal or state regulatory agencies.
- J. The design, construction, installation, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists. Proof from the photovoltaic contractor that the installation of the solar energy system will not reflect light or cause glare into the windows of neighbors shall be provided with the building permit application. Proof could include, but is not limited to, proper siting, angling, and orientation per the contractor's design plans.
- K. All structures and devices used to support solar collectors shall be nonreflective and/or painted a subtle or earth-tone color.
- L. Solar storage batteries. When solar storage batteries are included as part of any solar energy system, they shall be placed in a secure container or enclosure meeting the requirements of the New York State Building Code.
- M. Artificial lighting of any solar energy system shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- N. Any solar energy system to be used strictly for agricultural use purposes in accordance with the New York State Agriculture and Markets Law may have some of the requirements of this article waived by the Building Inspector or Elma Town Board.

§ 118A-7. Roof-mounted solar energy systems.

- A. Roof-mounted solar energy systems that produce electricity on site for on-site consumption are permitted as an accessory use in all zoning districts in the Town.
- B. Roof-mounted solar energy system installations shall incorporate the following design requirements:
- (1) Rooftop-mounted solar energy systems shall meet the height requirements of the underlying zoning district. All proposed installations must be accompanied with a set of drawings stamped by a New York State licensed engineer or registered architect verifying the structural integrity of the building and a New York State code compliance checklist.
 - (a) Pitched roof: Solar energy panels shall not extend more than 18 inches higher than the finished roof to which they are mounted.
 - (b) Flat roof: The maximum height of a solar energy panel at its highest pitch shall not extend more than eight feet above the parapet wall.
- C. Roof-mounted solar energy systems installed on residential/agricultural zoned structures shall be exempt from site plan review under the local Zoning Code⁵⁹ or other land use regulations; however, a review may be

⁵⁸. Editor's Note: See Ch. 144, Zoning.

⁵⁹. Editor's Note: See Ch. 144, Zoning.

§ 118A-7 requested by the Town Building Inspector. All systems on commercial/industrial structures are subject to site plan review per Chapter 117. § 118A-10

§ 118A-8. Building-mounted solar energy systems.

- A. Building-mounted solar energy systems that produce electricity on site for on-site consumption are permitted as an accessory use in all zoning districts in the Town.
- B. Building-mounted solar energy systems shall not extend more than 18 inches from the building wall, and in no instance shall any part of the system extend beyond the eave line or top of a parapet wall. All proposed installations must be accompanied by a set of drawings stamped by a New York State licensed engineer verifying the structural integrity of the building and a New York State code compliance checklist.

§ 118A-9. Ground-mounted solar energy systems.

Ground-mounted solar energy systems are not a permitted use except by special use permit. See Article II of this chapter for special use permit requirements and procedures.

- A. The location of said solar energy system shall be placed no closer than two times the standard setback requirements for an accessory building/structure of the zoning district in which it is located.
- B. The location of said solar energy system shall be placed no closer than 750 feet from all property lot lines bordering a school or public park.
- C. The location of said solar energy system shall be only located in the rear yard, behind the main structure.
- D. The height of said solar energy system shall not exceed 15 feet when oriented at maximum tilt.
- E. The total surface area of said solar energy system on a lot shall not exceed 800 square feet per acre in all zones.

§ 118A-10. Large utility-scale solar energy systems.

Large utility-scale solar energy systems are not a permitted use except by special use permit and would only be considered in Commercial (C3) and Industrial (I) Zones. See below for special use permit requirements. The large utility-scale solar energy system shall meet the following conditions:

- A. Setbacks. In addition to the setback requirements of the underlying district, any utility-scale solar energy system shall adhere to the following setbacks:
 - (1) The location of said solar energy system shall be placed no closer than two times the standard setback requirements for an accessory building/structure of the zoning district in which it is located.
 - (2) From public roads and railroads: a minimum of 150 feet from any public road or railroad (measured from the road right-of-way or property line).
 - (3) From schools or public parks: a minimum of 750 feet from all property lot lines bordering a school or public park.
- B. Maximum overall height. The height of a utility-scale solar energy system shall not exceed 15 feet above grade when oriented at maximum tilt.
- C. Any expansions, modifications, or changes to the utility systems are subject to the same review requirements as the original application.
- D. A utility-scale solar energy system shall adhere to all applicable federal, state, county and Town laws, regulations, and building, plumbing, electrical, and fire codes.

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- E. Development and operation of a utility-scale solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town or other federal or state regulatory agencies.
- F. The design, construction, operation, and maintenance of a utility-scale solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.
- G. All structures and devices used to support solar collectors shall be nonreflective and/or painted a subtle or earth-tone color.
- H. All transmission lines and wiring associated with a utility-scale solar energy system shall be buried or utilize existing overhead transmission line structures and include necessary encasements in accordance with the National Electrical Code and Town requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project, on the site plan.
- I. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
- J. Artificial lighting of utility-scale solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- K. All large utility-scale solar energy systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing.
- L. Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations.
- M. A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of screening the site, may be required along any property line that abuts an existing residence.
- N. The total surface area of said solar energy system on a lot shall not exceed 800 square feet per acre in all zones.

ARTICLE II
Special Use Permit Requirements and Procedure

§ 118A-11. Special use permit requirements.

- A. The applicant/owner will complete the application for a special use permit and submit it to the Town Building Inspector.
- B. The Town Building Inspector shall refer the application for a special use permit to Town Board for a work session meeting.
- C. The Town Board, after review at a work session, will refer the matter to the Town Planning Board for review and recommendation of special use permit and site plan review.
- D. After recommendation from the Town Planning Board, the Town Board will hold a public hearing to approve or disapprove a preliminary special use permit. The applicant will notify all property owners within 500 feet of the subject property by certified mail, return receipt requested. The applicant is responsible for associated mailing costs.
- E. After approval of preliminary special use permit, the Town Board will refer the project to the Town Planning Board for site plan review and approval/disapproval.
- F. After approval from the Town Planning Board, the applicant then may apply for a building permit.
- G. Upon completion of the project, but prior to certificate of occupancy/compliance has been issued, the applicant will return to the Town Board for a final special use permit, provided all criteria has been satisfied by applicant for the project.
- H. General provisions.
 - (1) A use listed as requiring a special use permit shall not be presumed to be an allowable use. It shall be the responsibility of the applicant for a special use permit to prove to the satisfaction of the Town Board that the items listed in this section and under the section of that particular special use permit are met. These uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered on an individual case.
 - (2) No special use permit shall be authorized by the Town Board unless, in addition to other requirements specified in this chapter, it finds that each such special use permit:
 - (a) Will be in harmony with the general purposes and intent of this chapter.
 - (b) Will not create a hazard to health, safety, or the general welfare.
 - (c) Will not alter the essential character of the neighborhood nor be detrimental to the residents thereof.
 - (d) Will not otherwise be detrimental to the public convenience and welfare.
- I. Application procedure.
 - (1) Applicants for a special use permit to place, construct, and make a major modification to large utility-scale solar energy systems within the boundaries of the Town shall submit six sets of the following information to the Town Board. The Town Board shall first present it to a New York State licensed engineer or consultant for an initial review. The cost of the review will be paid by the applicant, and then the applicant shall be sent on to the Planning Board for its review and recommendation.
 - (2) No such application shall be deemed filed until any required application fee has been paid. See Article

V of this law for applicable fees.⁶⁰

(3) The following information shall be contained in the application:

(a) A completed State Environmental Quality Review Act (SEQRA) long form Environmental Assessment Form (EAF).

(b) Necessary permit information:

- [1] Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include the name, address, and telephone number of the applicant and a letter or other written permission signed by the property owner authorizing the applicant to represent the property owner.
- [2] Documentation of access to the project site(s), including, but not limited to, location of all access roads, gates, and parking areas.
- [3] Documentation of the clearing, grading, stormwater and erosion control plans.
- [4] Utility interconnection data; a copy of written notification to the utility of the proposed interconnection and any related agreements for the purchase of electricity.
- [5] Documentation of utility notification, including an electric service order number.
- [6] One- or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices.
- [7] After completion of a utility-scale solar energy system, the applicant shall provide a post-construction certification from a New York State licensed engineer that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.
- [8] Compliance with regulatory agencies. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of a large utility-scale solar energy system.

(4) Site plan review.

(a) A site plan shall be in accordance with the Town's site plan requirements per Chapter 117, Site Plan Review, and drawn in sufficient detail, as follows:

- [1] Plans and drawings of the solar energy system installation signed by a New York State licensed engineer or registered architect showing the proposal layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved, and utility lines, both above and below ground, on the site and adjacent to the site;
- [2] Certification from a professional engineer or architect registered in New York State indicating that the building or structure to which the solar energy system is to be affixed is capable of handling the loading requirements of the solar energy system and various components.
- [3] Property lot lines and the location and dimensions of all existing structures and uses within

60. Editor's Note: So in original.

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500 feet of the solar panels.

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- [4] Proposed fencing and/or screening for said project.
 - [5] Any such additional information as may be required by the Town's professional engineer or consultant, Town Board, Town Attorney, Building Inspector or other Town entity.
 - [6] The issuance of a special use permit does not constitute solar sky space rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar sky space as a result of uses or development performed in accordance with the Town Code.
 - [7] Where the owner of the property is different than the site host of a solar energy system, the owner of the property shall provide an affidavit or evidence of agreement between the property owner and the solar energy system's owner/operator verifying that the system owner/operator has the permission of the property owner to install and operate the solar energy system.
 - [8] Following construction of a large utility-scale or ground-mounted solar energy system, all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust.
- J. A certified notification to all property owners within 500 feet of all property lines must be made and paid for by the applicant.
 - K. For all large utility-scale solar energy systems, the applicant and/or property owner shall submit a decommissioning plan for review and approval as part of the special use permit application. The decommissioning plan shall identify the anticipated life of the project, method and process for removing all components of the solar energy system and returning the site to its preexisting condition, and estimated decommissioning costs, including any salvage value. See Article III of this chapter.
 - L. Applications for special use permits shall be acted on by the Town Board after a public hearing. A public hearing on said site plan/special use permit may not be waived by the Town Board.
 - M. The Town Board may, for large utility-scale and ground-mounted solar energy systems, grant a special use permit, deny a special use permit, or grant a special use permit with written stated conditions. Denial of a special use permit shall be by written decision based upon substantial evidence considered by the Town Board. Upon issuance of a special use permit, the applicant shall obtain a building permit for the utility-scale solar energy system.
 - N. Time limit on completion. Upon receipt of any required approval by the Town Board, the applicant shall have six months to apply for a building permit. After issuance of a building permit, the applicant shall have six months to begin the project and 12 months to complete the project. Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained.
 - O. If the use of an approved solar energy system which required a special use permit is discontinued, the owner or operator shall notify the Building Inspector within 30 days of such discontinuance. If a solar energy system is to be retained and reused, the applicant shall further inform the Building Inspector of this in writing at such time and obtain any necessary approvals within one year; otherwise it shall be automatically deemed abandoned.
 - P. Any changes or alterations post construction to a utility-scale or ground-mounted solar energy system shall be done only by amendment to the special use permit, subject to all requirements of this Code.
 - Q. In addition to the requirements of this article, the special use permit application shall be subject to any other site plan approval requirements set forth in the Zoning Law.⁶¹

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§ 118A-12. Transfer of special use permit.

Special use permits shall be assignable or transferable so long as they are in full compliance with this article and the Building Inspector is notified in writing at least 15 days prior thereto.

§ 118A-13. Violations.

- A. In the event of any violation of a special use permit, the Town Board may seek enforcement under any available authority, including but not limited to Town Law § 268.
- B. Any use receiving a special use permit that subsequently does not meet the requirements and/or conditions of that permit or this chapter shall be subject to fines under the Town Law and shall have the permit revoked, and the use shall be terminated within 90 days of notification by the Town.

§ 118A-14. Expiration.

A special use permit shall be deemed to authorize only one particular use and shall expire if the special use shall cease for a period of more than one year.

ARTICLE III
Unsafe, Inoperable or Abandoned Systems

§ 118A-15. Decommissioning plan.

Unsafe, inoperable, incomplete, and/or abandoned solar energy systems and solar energy systems for which a special use permit has expired shall be removed by the applicant and/or property owner within six months of notification by the Town. All safety hazards created by the installation and operation of the solar energy system shall be eliminated and the site restored to its pre-existing condition within six months of the removal of the solar energy system.

- A. Determination of abandonment or inoperability. A determination of the abandonment or inoperability of a solar energy system shall be made by the Town Building Inspector, who shall provide the owner with written notice by personal service or certified mail. A solar energy system shall be deemed abandoned when it fails to produce energy for at least one year. Any appeal by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town Clerk's office within 30 days of the Building Inspector causing personal service or mailing by certified mail his written determination, and the Town Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Town Board or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the 366 days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.
- B. To ensure the proper removal of utility-scale solar energy systems, a decommissioning plan shall be submitted as part of the application. Compliance with this plan shall be made a condition of the issuance of a special permit under this section. The decommissioning plan must specify that after the utility-scale solar energy system can no longer be used, it shall be removed by the applicant or property owner. The plan shall demonstrate how the removal of all infrastructures and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected time line for execution. A cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a professional engineer or contractor. Cost estimates shall take into account inflation. Removal of utility-scale solar energy systems must be completed in accordance with the decommissioning plan.
- C. The applicant and/or property owner for a utility-scale solar energy system where the system is the principal use on a lot shall, as a condition of the special use permit and upon each renewal, provide and maintain a form of financial surety. Such financial surety shall be provided either through a security deposit, escrow account, bond, or in a manner otherwise acceptable to the Town. The amount of the surety shall be based on 150% replacement cost of the project. It is intended to cover, in whole or in part, the cost of decommissioning in the event the Town must remove any utility-scale solar energy systems and associated structures/components, as well as restore the site subsequent to such removal in accordance with the approved decommissioning plan. Upon successful completion of all decommissioning activities, any remaining portion of the posted financial surety shall be returned to the applicant. Such financial surety shall not be required for systems owned and operated by the Town. Said surety shall be obtained from a AAA-rated bonding company, subject to Town Board approval.
- D. Removal. All solar energy systems shall be dismantled and removed immediately from a lot when the special permit or approval has been revoked by the Town Board or the solar energy system has been deemed inoperative or abandoned by the Building Inspector for a period of more than 365 consecutive days at the cost of the applicant and/or property owner. If the applicant and/or property owner does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the applicant and/or owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel.

ARTICLE IV
Maintenance

§ 118A-16. Inspections; continued operation.

- A. Inspections. Upon reasonable notice, the Town of Elma Building Inspector or his designee may enter a lot on which a solar energy system has been approved for the purpose of compliance with any requirements or conditions. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a utility-scale solar energy system shall be inspected annually by a New York State licensed professional engineer that has been approved by the Town, or at any other time, upon a determination by the Town's Building Inspector that damage may have occurred. A copy of the inspection report shall be submitted to the Town Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- B. Continued operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a solar energy system regarding the system's usage at any time.

ARTICLE V
Revocation of Permit

§ 118A-17. Revocation.

Violations of any of the conditions of the special use permit, site plan approval or any other local, state or federal laws, rules or regulations, shall be grounds for revocation of the special use permit or site plan approval. Revocation may occur after the applicant is notified in writing of the violations and the Town Board holds a hearing on same.

§ 118A-18. Interpretation; conflict with other laws.

In their interpretation and application, the provisions of this article shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. It is not intended to interfere with, abrogate, or annul other rules, regulations or laws, provided that whenever the requirements of this article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards, shall govern.

§ 118A-19. Severability.

If any section, subsection, phrase, sentence, or other portion of this article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

ARTICLE VI
Penalties

§ 118A-20. Penalties for offenses.

- A. Any person or persons, association or corporation committing an offense against this chapter or any section or provision thereof is guilty of a violation punishable by a fine not exceeding \$250 or imprisonment for a period not exceeding 15 days for each such offense, or by both such fine and imprisonment.
- B. This chapter may also be enforced by civil action or by proceedings by the Town of Elma.
- C. Each week that a violation is permitted to exist shall constitute a separate offense.

Chapter 119
SOLID WASTE

§ 118A-20

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

§ 118A-20

GENERAL REFERENCES

Dumps and dumping — See Ch. 68.

Zoning — See Ch. 144.

§ 119-1

§ 119-1

ARTICLE I
Refuse Fee
[Adopted 11-20-1991 by L.L. No. 2-1991]

§ 119-1. Assessment, payment and collection of fee; amount.

- A. A refuse fee shall be paid by all residential property owners where a home has been constructed. Said fee will be assessed on a per-unit basis in the following manner: property owners age 65 and over, one unit; single-family home, two units; two-family home, three units; and multiple dwellings, one unit per apartment. Said fees will be due and payable on the county tax bill. The Town Board will have the authority to collect said charges that remain unpaid after the due date of the county tax bill.
- B. The amount to be charged as a refuse fee, pursuant to this section, shall be determined from time to time by resolution of the Town Board.

ARTICLE II
Recycling; Licensing of Collectors
[Adopted 8-5-1992]

§ 119-2. Purpose.

Whereas the reduction, reuse and recycling of solid waste are important public concerns and will aid in the protection and preservation of the environment; and whereas the Solid Waste Management Act of 1988⁶² mandates passage of a source-separation ordinance to be passed by each local municipality within New York State by September 1, 1992, to require that solid waste shall be separated into recyclable, reusable or other components for which economic markets for alternate uses exist; now, therefore, be it resolved that the Town of Elma establishes mandatory recycling within this municipality.

§ 119-3. Definitions.

Unless otherwise stated expressly, the following words and expressions, where used in this article, shall have the meanings described to them by this section:

AUTHORIZED COLLECTOR — A person, employee or employer or agent thereof authorized by contract or license with the Town of Elma to collect solid waste from residential, commercial and institutional properties as herein defined under the terms and conditions of this article.

BATTERY — Lead-acid batteries, each with a capacity of six or more volts which contain lead and sulfuric acid and which are used as a power source in a motor vehicle. "Batteries" are hazardous waste.

BULKIES — Large items such as sofas, upholstered chairs, mattresses and box springs, but excluding white goods.

CAN — Metal cans made of tin, aluminum or other ferrous or nonferrous or composite cans and containers used for food or beverages. All metal "cans" shall be rinsed of contaminants but labels need not be removed.

CARDBOARD — Wood-pulp-based material which is usually smooth on both sides with a corrugated center. It shall also mean box, board or paperboard having the same material and characteristics as cardboard, but without a corrugated center. It shall not mean wax-coated or glossy or soiled cardboard.

COLLECTOR — Any person who picks up solid waste and transports that solid waste for hire to a solid waste disposal facility, recycling center or transfer station for recycling or disposal.

COMMERCIAL PROPERTY — Any residence which is not covered in "residential property" or which is defined in the Elma ordinances, § 144-72A(2) through (17) and § 144-72B.

COMMERCIAL WASTE — Solid waste generated by stores, offices, institutions, restaurants, warehouses and nonmanufacturing activities at industrial facilities.

CONSTRUCTION AND DEMOLITION DEBRIS — Waste resulting from construction, remodeling, repair and demolition of structures, road building and land clearing. Such wastes include but are not limited to roofing materials, bricks, concrete and other masonry materials, soil, rock, lumber, road spoils, paving material and tree or brush stumps.

DIRECTOR OF SANITATION — Shall be appointed by the Town Board to effect the provisions of this article and shall be fully responsible for effecting measures to carry out the intent of the law.

GLASS — All clear (flint), green and brown (amber) colored glass containers. It shall not mean mirrors, auto glass, milk-white glass, window glass, light bulbs, cookware, pyrex, crystal or ceramics.

HAZARDOUS WASTE — Waste as defined in § 27-0903 of the Environmental Conservation Law; source, special nuclear or by-product material as defined in the United States Atomic Energy Act of 1954; and low-level radioactive waste as defined in § 29-0101 of the Environmental Conservation Law.

62. Editor's Note: See General Municipal Law § 120-aa, Subdivision 2a.

§ 119-3

HOUSEHOLD WASTE — Solid waste discarded from single or multiple dwellings, hotels, motels, campsites, public and private recreation areas and other residential sources.

§ 119-3

INDUSTRIAL PROPERTY — Property which is used for those uses permitted in the Elma Town ordinances, § 144-88B.

INDUSTRIAL WASTE — Industrial/commercial waste pursuant to Environmental Conservation Law § 27-0303 and such rules and regulations as may be promulgated by the Department of Environmental Conservation (DEC) consistent therewith.

INSTITUTIONAL PROPERTY — Property which houses a church, school, hospital, nursing home or the like.

MOTOR VEHICLE — Any and all vehicles propelled or drawn by power, other than muscular power, intended for use on public highways; any unregistered, old or secondhand motor vehicle or trailer; any motor vehicle in such condition or state of repair that it cannot be licensed immediately without extensive repair; and any abandoned, junked, discarded, wholly or partially dismantled motor vehicle no longer intended or in condition for legal use on the public highways.

NONHAZARDOUS WASTE — All waste which is not included in the definition of hazardous waste.

NONRECYCLABLE WASTE — All waste not included in the definition of recyclable waste.

PAPER — All high-grade office paper, fine paper, bond paper, office paper, xerographic paper, mimeo paper, duplication paper, magazines, paperback books, school paper, catalogs, junk mail, computer paper, telephone books and similar cellulose materials and newspaper, but shall not mean wax paper, plastic or foil-coated paper, Styrofoam, wax-coated food and beverage containers, carbon paper, blueprint paper, food-contaminated paper, soiled paper and cardboard.

PERSON — One or more persons of either sex, natural persons, corporations, partnerships, associations, joint-stock companies, societies, clubs, fraternal orders and all other entities of any kind capable of being sued.

PLASTIC — All high-density polyethylene (HDPE) and polyethylene terephthalate (PET) plastic clean of contaminants, with tops removed. If crushed, these containers do not break. The following "plastic containers" are acceptable: detergent bottles, plastic liquor bottles, peanut butter jars, soda bottles, milk and juice containers, shampoo containers and similar items. This term excludes all film, vinyl, foam plastic containers, yogurt, cottage cheese and pudding-type containers, pens, tops, bags and hard plastic containers or items.

RECYCLABLE CAN — Defined in the same manner as "can."

RECYCLABLE CARDBOARD — Corrugated cardboard.

RECYCLABLE GLASS — Clear, green or amber food and beverage containers only.

RECYCLABLE PAPER — Newspapers and magazines.

RECYCLABLE PLASTIC — Plastic soda, juice and liquor bottles; plastic milk, water and cider jugs; plastic laundry and dish detergent bottles; plastic bleach bottles; and containers with the triangular arrow sign on the bottom.

RECYCLABLE WASTE — Those materials specified by the Town to be recycled. The list of materials is specified in any recycling regulations generated by resolution of the Town Board and may be reviewed as deemed necessary by the Town Board, and generally consists of any material designated from time to time by resolution of the Town Board which is separated from the waste stream and held for its material recycling and reuse value.

RECYCLING FACILITY — A facility designated by the Town for receiving and processing one or more types of recyclable materials.

RESIDENCE — Any structure which is used primarily for dwelling and which is in the geographic limits of the Town of Elma, when such structure is used primarily for residence by the owners thereof and is not used primarily to generate income. Should it be used to primarily generate income, then it will be designated as commercial property.

§ 119-3

SOLID WASTE MATERIAL — All recyclables and nonrecyclables which make up the waste stream. "Solid waste material" does not include material treated separately as hazardous waste under § 27-0903 of the Environmental Conservation Law; source, special nuclear or by-product material as defined in the United States Atomic Energy Act of 1954; or low-level radioactive waste as defined in § 29-0101 of the Environmental Conservation Law.

SOURCE SEPARATION — The segregation of recyclable materials from the solid waste stream at the point of generation for separate collection, sale or other disposition.

TIRES — Tires from cars, trucks and other motor vehicles.

TOWN — The Town of Elma, Erie County, New York.

TOWN BOARD — The duly elected and constituted legislative body of the Town of Elma, New York.

TRANSFER STATION — That facility where persons and collectors, as defined herein, transfer possession of solid waste to the Town for disposal or recycling.

TREE AND BRUSH PARTS — Whether coniferous or deciduous, are disposable and recyclable except for stumps of trees or brush which shall be disposed of as "construction debris."

WHITE GOODS — Major appliances such as refrigerators, freezers, water heaters, stoves, washing machines, dryers and dishwashers. It shall also mean metal heating or cooling systems and the components thereof.

YARD WASTE — Solid waste consisting of plant matter resulting from landscaping activities, including but not limited to such items as lawn clippings, tree trimmings, fallen leaves and weeds, but excluding tree and brush parts.

§ 119-4. Collection, conveyance and disposal of solid waste required.

All solid waste accumulated on any residential, commercial and institutional property in the municipality must be collected, conveyed and disposed of in accordance with the provisions of this article. It shall be unlawful for any person to collect and/or dispose of any solid waste within the Town of Elma except as provided in this article.

§ 119-5. Source separation of recyclable materials required.

Solid waste generated or originated in the Town of Elma which has been left for private collection shall be source-separated in accordance with the regulations of the Town of Elma and shall be the responsibility of the generator and the private collector of such solid waste. Such private collectors shall provide the Town with a copy of their plan to implement said source separation and recycling not later than September 1, 1992, so that said plans may be reviewed and thereafter incorporated in the Town regulations on recycling.

§ 119-6. Acceptance of hazardous waste prohibited.

The Town of Elma will not accept at its transfer station any hazardous waste.

§ 119-7. Transfer station containers.

It shall be a violation of this article for any person to place in any container at the transfer station maintained by the Town of Elma materials other than those which are nonhazardous, nonrecyclable waste or recyclable waste. The following items will be placed in separate bins provided by the Director of Sanitation at the transfer station located in the Town of Elma:

- A. Recyclable paper.
- B. Recyclable glass which must be rinsed.
- C. Recyclable cans which must be rinsed but need not have the labels removed.
- D. Recyclable plastic.

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E. Recyclable cardboard.

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§ 119-8. Collection and disposal of construction and demolition debris, white goods and bulkies.

- A. The Director of Sanitation shall determine, subject to the approval of the Town Board, schedules for the collection of construction and demolition debris, major appliances and large household furnishings.
- B. No person shall place or store construction and demolition debris with nonhazardous recyclable or nonrecyclable waste. The person creating construction and demolition debris shall remove the same and dispose of the same in a sanitary manner.
- C. Any and all debris from work done by a contractor must be removed by the contractor that did the work. The Town will not collect any construction or demolition debris.
- D. All white goods or bulkies which are to be discarded from a residence where the white goods or bulkies were actually in use shall be taken to the transfer station. It shall be the sole responsibility of the owner to dismantle the white goods or bulkies so that they will not be a safety hazard to the public. In this respect, doors shall be removed from the white goods before placing them at the transfer station.
- E. The Town shall have no obligation to pick up and remove any construction and demolition debris, white goods or bulkies which are not used in a residence in the Town of Elma.
- F. The Town employees and/or equipment shall not enter private property or structures in making collections.
- G. Nothing herein shall prevent any person from making arrangements for the private collection, sale or donation of recyclable materials.

§ 119-9. Collection and disposal of brush and tree parts.

- A. The Director of Sanitation is authorized to provide for the collection of brush and tree parts at such times and in such manner that the Town Board shall from time to time provide.
- B. The authorization provided in the preceding subsection shall apply only to brush and tree parts produced by the individual activity or efforts of the owner or occupant of the premises.
- C. Brush and tree parts produced by commercial contractors must be removed from the premises by the contractor or by the owner or occupant of the premises at his expense. Such brush and tree parts may not be placed at or near the curb or street right-of-way, except temporarily as may be necessary in the course of the work which produced the brush and tree parts.
- D. The Town of Elma will not collect or remove brush or tree parts produced by commercial contractors.

§ 119-10. Yard waste.

- A. The Director of Sanitation is authorized to provide for the collection of yard waste at such time and in such manner as the Town Board shall from time to time provide.
- B. The authorization provided for in the preceding subsection shall apply only to yard waste produced by the individual activity or efforts of the owner or occupant of the premises.

§ 119-11. Tires.

Tires shall be disposed of only at the Town transfer station upon payment of a fee as may be determined from time to time by resolution of the Town Board.

§ 119-12. Authorized collectors; license required.

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- A. All authorized collectors must obtain a solid waste collection license from the Town of Elma. A fee for such license shall be set by the governing body on an annual basis, and all licenses shall be issued for the calendar year or such portion thereof. There shall be no reduction in the fee for a license issued after the beginning of any calendar year.
- B. An authorized collector sticker shall be prominently displayed on each vehicle operated by or on behalf of the authorized collector.
- C. Authorized collector applications may be denied if the applicant or licensee has been adjudged or administratively determined to have committed one or more violations of this article during the preceding calendar year.
- D. All authorized collectors licensed by the Town of Elma shall indemnify and hold harmless the Town of Elma for any pending, threatened or actual claims, liability or expenses arising from waste disposal by the authorized collector in violation of this article.
- E. Authorized collectors shall offer collection of services for all recyclable materials to all residential, commercial, industrial and institutional customers from whom they provide solid waste collection services.
- F. Each collector who shall apply for a license under this section shall state the manner of collection and the place and method of disposal of the solid waste and recyclable materials from its residential, commercial, industrial and institutional customers.
- G. Monthly reports.
- (1) Each collector shall maintain separate monthly records of solid waste and recyclable materials collected, transported or disposed of by the authorized collector, which include the following information:
 - (a) The municipality or geographical area and number of units in which the solid waste or recyclable material was generated.
 - (b) The quantity, by ton, of solid waste and of each type of recyclable material collected.
 - (c) The quantity, by ton, of recycled material delivered to a recycling facility(s) and the location of the same.
 - (d) The quantity, by ton, of solid waste delivered to each facility.
 - (2) Reports containing the information required as stated above shall be compiled and delivered to the Town Director of Sanitation or other designated individual for each reporting period as designated by the regulations; however, such reporting period shall be no more frequently than quarterly.
- H. Authorized collectors shall not accept for collection solid waste which has not been source-separated in conformity with this article.

§ 119-13. Failure to comply; enforcement procedure; inspections and appearance tickets.

- A. When the employees or officials designated by the Director of Sanitation or the Director of Sanitation determines that a failure to comply with this article has occurred, the Director of Sanitation shall recommend to the municipality that the authorized collector application or license be denied, suspended or revoked or its holder subjected to a reprimand or fine or that the generator or originator of the solid waste or recyclable materials be subject to sanctions, fines and penalties as described herein. Notice and opportunity to be heard shall be provided prior to the denial, suspension or revocation of a solid waste license or authorized collector permit or the issuance of a sanction, fine or penalty.
- B. Notice. The Director of Sanitation shall notify the effected generator, applicant or licensee of the alleged failure, in writing.

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(1) The notice shall include the following:

- (a) A statement of the condition allegedly violated, referring to the pertinent ordinance, law, rule or regulation.
- (b) A short and plain statement of the alleged misconduct, including the date and approximate time.
- (c) A statement of the time, place and nature of the hearing.

(2) The notice shall be personally served or sent by registered mail to the generator, applicant or licensee at his last known address, at least 10 days before the hearing date, with a copy to the Town Board.

C. Hearing. A hearing shall be held before the Town Justice within a reasonable period, which shall be at least 10 days after service of the notice. The generator, applicant or licensee may be represented by counsel at the hearing and may offer evidence and cross-examine witnesses. Within 20 days after the close of the hearing, the Town Justice shall determine whether the alleged failure to comply with this article has occurred; and if the Town Justice determines that such a failure has occurred, decide whether the generator, applicant or licensee shall be subject to a fine or penalty, or both, whether the application shall be denied or an existing solid waste license or authorized collector's status be suspended or revoked or its holder subjected to a reprimand and issue an order carrying out this decision.

D. Determinations, decisions and orders. Disposition may be made by stipulation, agreed settlements, consent order, default or other informal method. The Town Justice shall promptly notify the generator, applicant or licensee, in writing, of the final determination, decision or order.

E. Enforcement.

- (1) Inspections and appearance tickets. All portions of vehicles and containers used to haul, transport or dispose of solid waste materials, including such containers placed outside residential, commercial, industrial and institutional sites, shall be subject to inspection to ascertain compliance with this article.

§ 119-14. Unauthorized disposal of solid waste prohibited.

No person shall cart to, dump or deposit any solid waste upon any property in the Town except under the authorization, supervision and direction of the Director of Sanitation. The Director of Sanitation, a police officer or such other person as may be designated by the Town Board is authorized and directed to enforce this section and to cause collections to be made accordingly.

§ 119-15. Penalties for offenses.

- A. During any 12 consecutive months, the failure of any person engaged in the business of collecting solid waste and/or recyclable materials or rendering solid waste and/or recycling services who is not authorized by the Town or who collects, picks up, removes or causes to be collected, picked up or removed solid waste or recyclable materials in a manner not in compliance with this article shall be guilty of a violation, punishable by a fine of not less than \$200 and not exceeding the sum of \$1,000 or by imprisonment for a term not exceeding 15 days, or both. Each day such violation occurs or continues shall constitute a separate offense.
- B. A waste generator who fails to comply with the provisions of this article shall be guilty of a violation, punishable as follows:
 - (1) For the first violation: a written warning clearly stating the nature of the violation and the schedule of fines for future violations.
 - (2) For the second violation within one year: by a fine of not less than \$50 nor more than \$100.
 - (3) For the third violation within one year: by a fine of not less than \$100 nor more than \$150.

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(4) For the fourth and each subsequent violation within one year: by a fine of not less than \$150 nor more than \$300. § 119-15
- C. Any penalties of damages recovered or imposed under this article are in addition to any other remedies available at law or in equity.
- D. No penalties, fines, civil sanctions or other enforcement actions will be commenced prior to January 1, 1993, in order to permit persons regulated hereunder to come into compliance with this article.

Chapter 120

STORMWATER MANAGEMENT

§ 119-15

[HISTORY: Adopted by the Town Board of the Town of Elma 4-15-2015 by L.L. No. 2-2015. Amendments noted where applicable.]

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GENERAL REFERENCES

Building construction — See Ch. 52.

Site plan review — See Ch. 117.

Excavations — See Ch. 75.

Stormwater Management Overlay District — See Ch. 120A.

Filling and grading — See Ch. 77.

Subdivision of land — See Ch. 123.

Flood damage prevention — See Ch. 82.

Zoning — See Ch. 144.

Storm sewers — See Ch. 115, Art. XV.

§ 120-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated below:

AGRICULTURAL ACTIVITY — The activity of an active farm, including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

APPLICANT — A property owner or agent of a property owner who has filed an application for a land development activity.

BUILDING — Any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

CHANNEL — A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

CLEARING — Any activity that removes the vegetative surface cover.

DEDICATION — The deliberate appropriation of property by its owner for general public use.

DESIGN MANUAL — The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation), most recent version or its successor, including applicable updates, which serves as the official guide for stormwater management principles, methods and practices.

DEVELOPER — A person who undertakes land development activities.

EROSION CONTROL MANUAL — The New York Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004), most current version or its successor, commonly known as the "Blue Book."

GRADING — Excavation or fill of material, including the resulting conditions thereof.

IMPERVIOUS COVER — Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snow melt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

INDUSTRIAL STORMWATER PERMIT — A State Pollutant Discharge Elimination System (SPDES) permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION — The process of percolating stormwater into the subsoil.

JURISDICTIONAL WETLAND — An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as "hydrophytic vegetation."

LAND DEVELOPMENT ACTIVITY — Construction activity, including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre, or construction activity disturbing less than one acre of total land area that is part of a larger common plan of development or sale disturbing one acre or more in the aggregate, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LANDOWNER — The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

LICENSED PROFESSIONAL — A landscape architect or professional engineer licensed to practice his or her profession in New York State.

MAINTENANCE AGREEMENT — A legally recorded document that acts as a property deed restriction and

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which provides for long-term maintenance of stormwater management practices.

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NONPOINT SOURCE POLLUTION — Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

NYSDEC — The New York State Department of Environmental Conservation.

PHASING — Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

POLLUTANT OF CONCERN — Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

PROJECT — Land development activity.

RECHARGE — The replenishment of underground water reserves.

SEDIMENT CONTROL — Measures that prevent eroded sediment from leaving the site.

SENSITIVE AREAS — Cold-water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, or habitats for threatened, endangered or special concern species.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITY, PERMIT NO. GP-02-01 — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s), PERMIT NO. GP-02-02 — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards.

STABILIZATION — The use of practices that prevent exposed soil from eroding.

STOP-WORK ORDER — An order issued which requires that all construction activity on a site be stopped.

STORMWATER — Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT — The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

STORMWATER MANAGEMENT FACILITY — One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER (SMO) — An officer or employee designated by the Town Board to accept and review stormwater pollution prevention plans (SWPPPs), forward the plans to such employee, officer, or board of the Town of Elma which is reviewing an application for a construction activity requiring submission of a SWPPP, and inspect stormwater management practices.

STORMWATER MANAGEMENT OVERLAY DISTRICT — The overlay district created by the Town of Elma by local law⁶³ and consisting of all urbanized areas within the jurisdiction of the Town of Elma, as identified by the United States Census Bureau TIGER data, 2,000 Census, in two maps, attached hereto, entitled the "Buffalo, NY Urbanized Area Stormwater Entities as Defined by the 2,000 Census," dated October 21, 2002, as amended or revised.

STORMWATER MANAGEMENT PRACTICES (SMPs) — Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

63. Editor's Note: See Ch. 120A, Stormwater Management Overlay District.

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STORMWATER POLLUTION PREVENTION PLAN (SWPPP) — A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

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STORMWATER RUNOFF — Flow on the surface of the ground, resulting from precipitation.

SURFACE WATERS OF THE STATE OF NEW YORK — Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition, are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

WATERCOURSE — A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

WATERWAY — A channel that directs surface runoff to a watercourse or to the public storm drain.

§ 120-2. Findings; purpose.**A. Findings.** It is hereby determined that:

- (1) Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;
- (2) Such stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- (3) Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
- (4) Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing stream bank erosion and sedimentation;
- (5) Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- (6) Substantial economic losses can result from these adverse impacts on the waters of the Town;
- (7) Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- (8) The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety; and
- (9) Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

B. Purpose. The purpose of this chapter is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in § 120-2A. This chapter seeks to meet those purposes by achieving the following objectives:

- (1) Meet the requirements of minimum measures four and five of the SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s), Permit No. GP-02-02, or as amended or revised;
- (2) Require land development activities to conform to the substantive requirements of the SPDES General Permit for Stormwater Discharges from Construction Activity, Permit No. GP-02-01, or as amended or revised;
- (3) Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;
- (4) Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- (5) Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and

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(6) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and ensure that these management practices are properly maintained and eliminate threats to public safety.

§ 120-3. General provisions.

- A. Applicability. This chapter shall be applicable to all land development activities within the Stormwater Management District.
- B. Stormwater Management District. The Stormwater Management District consists of all urbanized areas within the jurisdiction of the Town of Elma, as identified by the United States Census Bureau TIGER data, 2000 Census, in two maps, attached hereto, entitled the "Buffalo, NY Urbanized Area Stormwater Entities as Defined by the 2000 Census," dated October 21, 2002, as amended or revised. Such maps and any amendments or revisions thereto are hereby declared to be a part of this chapter and shall be filed at the Elma Town Hall.
- C. Exemptions. The following activities shall be exempt from review under this chapter:
 - (1) Agricultural activity;
 - (2) Silvicultural activity except that landing areas and log haul roads are subject to review under this chapter;
 - (3) Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility;
 - (4) Repairs to any stormwater management practice or facility deemed necessary by the SMO;
 - (5) Any part of a subdivision if a plat for the subdivision has been approved by the Town of Elma on or before the effective date of this chapter;
 - (6) Land development activities for which a building permit has been approved on or before the effective date of this chapter;
 - (7) Cemetery graves;
 - (8) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles;
 - (9) Emergency activity immediately necessary to protect life, property or natural resources;
 - (10) Activities of an individual engaging in home gardening by growing flowers, vegetables or other plants primarily for use by that person and his or her family; and
 - (11) Landscaping and horticultural activities in connection with an existing structure.
- D. Conflict. Where the conditions imposed by any provisions of this chapter are either more restrictive or less restrictive than comparable conditions imposed by any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.
- E. Responsibility for administration. The SMO shall administer, implement, and enforce the provisions of this chapter. Such powers granted or duties imposed upon the SMO may be delegated, in writing, by the SMO as may be authorized by the Town.

§ 120-4. Procedure.

The procedures applicable to all land development activities subject to review under this chapter are as follows:

- A. The Town of Elma shall designate an SMO who shall accept and review all SWPPPs. The SMO may:
 - (1) Review the SWPPPs;
 - (2) Upon approval by the Town Board, engage the services of a registered professional engineer to review the SWPPPs, specifications and related documents at a cost not to exceed a fee schedule established by the Town Board; or
 - (3) Accept the certification of a licensed professional that the SWPPPs comply with the requirements of this chapter.
- B. For all land development activities subject to review and approval by the Building Inspector, Planning Board, or Town Board of the Town of Elma under floodplain development permit, site plan, or subdivision regulations, the applicant or developer shall be required to submit a SWPPP that complies with the requirements of this chapter to the SMO, and the land development activity shall be reviewed subject to the standards contained in this chapter.
 - (1) Initial review by SMO. Within 45 days of receipt of a SWPPP, the SMO shall forward the SWPPP, together with his or her recommendation to approve, approve with modifications, or disapprove the SWPPP, to the employee, officer, or board of the Town of Elma which is reviewing the application for approval of a land development activity requiring submission of a SWPPP. A recommendation of approval shall only be given if the SWPPP complies with the requirements of this chapter. In making a recommendation to approve with modifications or disapprove the SWPPP, the SMO shall state the reasons for the decision.
 - (2) Review by final reviewing body. The employee, officer, or board of the Town of Elma which is reviewing the application for approval of a land development activity shall review the SWPPP and recommendation of the SMO and shall act to approve, approve with modifications, or disapprove the SWPPP. Such reviewing board shall not act to approve the SWPPP unless it complies with the requirements of this chapter. If the reviewing board acts to approve with modifications or disapprove the SWPPP, the reviewing board shall state the reasons for the decision. In order to be approved, the applicant shall revise a SWPPP that has been approved with modifications or disapproved in accordance with the recommendations of the reviewing board and shall submit the revised SWPPP to such board for review.
- C. For all land development activities not subject to review by the Building Inspector, Planning Board or Town Board of the Town of Elma as provided in § 120-4B, the applicant or developer shall be required to submit a SWPPP that complies with the standards contained in this chapter to the SMO. Within 45 days of receipt of a SWPPP, the SMO shall approve, approve with modifications, or disapprove the SWPPP. Approval shall only be given if the SWPPP complies with the requirements of this chapter. In approving with modifications or disapproving the SWPPP, the SMO shall state the reasons for the decision in writing. In order to be approved, an applicant shall revise a SWPPP that has been approved with modifications or disapproved in accordance with the recommendations of the SMO and shall submit the revised SWPPP to the SMO for review.

§ 120-5. Stormwater pollution prevention plans.

- A. Stormwater pollution prevention plan requirement. No application for approval of a land development activity shall be reviewed and no land development activity shall be commenced until the SMO or such employee, officer, or board of the Town of Elma reviewing an application for approval of a land development activity requiring submission of a SWPPP has received a SWPPP that complies with the specifications in this chapter.
- B. Contents of stormwater pollution prevention plans.
 - (1) All SWPPPs shall provide the following background information and erosion and sediment controls:
 - (a) Background information about the scope of the project, including the location, type and size of the project;
 - (b) Site map/construction drawing(s) for the project, including a general location map. The site map should be at a scale of no smaller than one inch to 100 feet. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the land development activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges;
 - (c) Description of the soil(s) present at the site;
 - (d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the Erosion Control Manual, not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP;
 - (e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
 - (f) Description of construction and waste materials expected to be stored on site with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill-prevention and response;
 - (g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;
 - (h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
 - (i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
 - (j) Temporary practices that will be converted to permanent control measures;
 - (k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
 - (l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
 - (m) Name(s) of the receiving water(s);

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- (n) Delineation of SWPPP implementation responsibilities for each part of the site;
 - (o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
 - (p) Any existing data that describes the stormwater runoff at the site.
- (2) Land development activities meeting Condition A, B or C below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth in § 120-5B(3) as applicable:
- (a) Condition A: stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on NYSDEC's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
 - (b) Condition B: stormwater runoff from land development activities disturbing five or more acres.
 - (c) Condition C: stormwater runoff from land development activity disturbing between one and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties.
- (3) SWPPP requirements for Condition A, B or C (post-construction stormwater runoff controls):
- (a) All information in § 120-5B(1);
 - (b) Description of each post-construction stormwater management practice;
 - (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice;
 - (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
 - (e) Comparison of post-development stormwater runoff conditions with predevelopment conditions;
 - (f) Dimensions, material specifications and installation details for each post-construction stormwater management practice;
 - (g) Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice;
 - (h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;
 - (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 120-7.
- (4) The SWPPP shall be prepared by a licensed professional and must be signed by such professional, who shall certify that the design of all stormwater management practices meets the requirements in this chapter.
- C. Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

D. Contractor certification.

- (1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the stormwater pollution prevention plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."
- (2) The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
- (3) The certification statement(s) shall be included with and become part of the SWPPP for the land development activity.

E. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

§ 120-5

§ 120-6

§ 120-6. Performance and design criteria for stormwater management and erosion and sediment control.

All land development activities shall be subject to the following performance and design criteria:

- A. Technical standards. For the purpose of this chapter, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this chapter:
 - (1) The Design Manual; and
 - (2) The Erosion Control Manual.
- B. Equivalence to technical standards. Where stormwater management practices are not in accordance with the technical standards set forth in § 120-6A, the applicant or developer must demonstrate equivalence to such technical standards.
- C. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

§ 120-7. Maintenance, inspection and repair of stormwater facilities.**A. Maintenance and inspection during construction.**

- (1) The applicant or developer of the land development activity or their representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this chapter. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
- (2) For land development activities meeting Condition A, B, or C in § 120-5B(2), the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site log book.
- (3) The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices.

B. Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Town of Elma to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this chapter. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the counsel for the Town of Elma.**C. Maintenance after construction.** The owner or operator of permanent stormwater management practices installed in accordance with this chapter shall ensure they are operated and maintained to achieve the goals of this chapter. Proper operation and maintenance also includes, as a minimum, the following:

- (1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this chapter.
- (2) Written procedures for operation and maintenance and training new maintenance personnel.
- (3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 120-6.
- (4) Maintenance agreements. The Town of Elma shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of the "Sample Stormwater Control Facility Maintenance Agreement" attached to this chapter as Appendix A.⁶⁴ The Town of Elma, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this chapter and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

64. Editor's Note: Appendix A is included as an attachment to this chapter.

§ 120-8. Administration and enforcement; penalties for offenses.**A. Construction inspection.****(1) Erosion and sediment control inspection.**

- (a) The SMO may require such inspections as necessary to determine compliance with this chapter and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this chapter and the SWPPP as approved. To obtain inspections, the applicant shall notify the SMO at least 48 hours before any of the following, as required by the SMO:

- [1] Start of construction;
- [2] Installation of sediment and erosion control measures;
- [3] Completion of site clearing;
- [4] Completion of rough grading;
- [5] Completion of final grading;
- [6] Close of the construction season;
- [7] Completion of final landscaping; and/or
- [8] Successful establishment of landscaping in public areas.

- (b) If any violations are found, the applicant and developer shall be notified, in writing, of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the SMO.
- (2) Stormwater management practice inspections. The SMO is responsible for conducting inspections of SMPs. All applicants are required to submit as-built plans for any SMPs located on site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.
- (3) Inspection of stormwater facilities after project completion. Inspection programs shall be established on any reasonable basis, including, but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher-than-typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher-than-usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.
- (4) Submission of reports. The SMO may require monitoring and reporting from entities subject to this chapter as are necessary to determine compliance with this chapter.
- (5) Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the Town of Elma the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in § 120-8A(3).

B. Performance guarantee.

- (1) Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town of Elma in its approval of the SWPPP, the Town of Elma may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of Elma as the beneficiary. The security shall be in an amount to be determined by the Town of Elma based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Town of Elma, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the facilities have been found to be acceptable to Town of Elma. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.
- (2) Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town of Elma with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town of Elma may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.
- (3) Recordkeeping. The Town of Elma may require entities subject to this chapter to maintain records demonstrating compliance with this chapter.

C. Enforcement and penalties.

(1) Notice of violation.

- (a) When the Town of Elma determines that a land development activity is not being carried out in accordance with the requirements of this chapter, it may issue a written notice of violation to the landowner, developer, and/or applicant. The notice of violation shall contain:
 - [1] The name and address of the landowner, developer and/or applicant;
 - [2] The address when available or a description of the building, structure or land upon which the violation is occurring;
 - [3] A statement specifying the nature of the violation;
 - [4] A description of the remedial measures necessary to bring the land development activity into compliance with this chapter and a time schedule for the completion of such remedial action;
 - [5] A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and
 - [6] A statement that the determination of violation may be appealed to the Town Board by filing a written notice of appeal within 15 days of service of notice of violation.
- (b) The landowner, developer, and/or applicant shall comply within 30 days of written notice of violation. The applicant must remediate violation.

- § 120-8 (2) Stop-work orders. The Town of Elma may issue a stop-work order for violations of this chapter. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Town of Elma confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this chapter. § 120-8
- (3) Violations. Any land development activity that is commenced or is conducted contrary to the provisions of this chapter may be restrained by injunction or otherwise abated in a manner provided by law.
- (4) Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this chapter shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.
- (5) Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this chapter, the SMO may prevent the occupancy of said building or land.
- (6) Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Elma may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
- D. Fees for services. The Town of Elma may require any person undertaking land development activities regulated by this chapter to pay a fee and/or expense for review of SWPPPs and related inspections.
- E. The fee for review and permit process shall be as follows:
- (1) Single-family or two-family residences and construction activities at agricultural properties:
- (a) One to less than five acres: \$150.
- (2) All other projects:
- (a) One to less than five acres: \$500.
- (b) Five to less than 10 acres: \$1,000.
- (c) Over 10 acres: \$1,000, plus \$100 per additional acre.

Chapter 120A

STORMWATER MANAGEMENT OVERLAY DISTRICT

§ 120-8

[HISTORY: Adopted by the Town Board of the Town of Elma 1-2-2008 by L.L. No. 1-2008. Amendments noted where applicable.]

§ 120-8

GENERAL REFERENCES

Building construction — See Ch. 52.

Stormwater management — See Ch. 120.

Flood damage prevention — See Ch. 82.

Subdivision of land — See Ch. 123.

Site plan review — See Ch. 117.

Zoning — See Ch. 144.

Storm sewers — See Ch. 115, Art. XV.

§ 120A-1. Legislative intent.

The purpose of this chapter is to create a Stormwater Management Overlay District in the Town of Elma, which shall be used and/or enforced with in conjunction with Local Law No. 3-2007⁶⁵ and Local Law No. 4-2007.⁶⁶

65. Editor's Note: See Ch. 115, Art. XV, Storm Sewers.

66. Editor's Note: Local Law No. 4-2007 was repealed and replaced by L.L. No. 2-2015 which amended Ch. 52, Building Construction; Ch. 82, Flood Damage Prevention; Ch. 117, Site Plan Review; Ch. 123, Subdivision of Land; and added a new Ch. 120, Stormwater Management.

§ 120A-1

§ 120A-2

§ 120A-2. General provisions.

The provisions of/requirements of Chapter 120, Stormwater Management, of the Code of the Town of Elma shall apply to any and all construction activities that take place in the Stormwater Management Overlay District, and the requirements and prohibitions set forth in Article XV of Chapter 115, Sewers, of the Code of the Town of Elma, shall apply to property within the Stormwater Management Overlay District and to water entering the Stormwater Management Overlay District.

§ 120A-2

§ 120A-3

§ 120A-3. Lands/properties affected.

All the lands/properties of Town of Elma shall be affected by this chapter. A Stormwater Management Overlay District Map shall be maintained and amended when necessary by the Town of Elma Building Inspector.

Chapter 121

STREETS AND SIDEWALKS

§ 120A-3

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

§ 120A-3

GENERAL REFERENCES

Excavations — See Ch. 75.

Subdivision of land — See Ch. 123.

Sewers — See Ch. 115.

ARTICLE I
Notification of Defects
[Adopted 5-18-1977 by L.L. No. 2-1977]

§ 121-1. Written notice required prior to maintenance of civil action.

No civil action shall be maintained against the Town of Elma or Town Superintendent of Highways of the Town of Elma for damages or injuries to persons or property sustained by reason of any highway, bridge or culvert being defective, out of repair, unsafe, dangerous or obstructed, unless written notice of such defective, unsafe, dangerous or obstructed condition of such highway, bridge or culvert was actually given to the Town Clerk or Town Superintendent of Highways and there was a failure or neglect within a reasonable time after the giving of such notice to repair or to remove the defect, danger or obstruction complained of; but no such action shall be maintained for damages or injuries to persons or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge or culvert, unless written notice thereof, specifying the particular place, was actually given to the Town Clerk or Town Superintendent of Highways and there was a failure or neglect to cause such snow or ice to be removed or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

§ 121-2. Filing of written notices received; presentation to Board.

The Town Superintendent of Highways shall transmit, in writing, to the Town Clerk, within five days after the receipt thereof, all written notices received by him pursuant to this article and Subdivision 2 of § 65-a of the Town Law. The Town Clerk shall cause all written notices received by him or her, pursuant to this article and Subdivision 2 of § 65-a of the Town Law, to be presented to the Town Board within five days of the receipt thereof or at the next succeeding Town Board meeting, whichever shall be sooner.

§ 121-3. Supersession of statute.

This article shall supersede in its application to the Town of Elma Subdivisions 1 and 3 of § 65-a of the Town Law.

ARTICLE II
Temporary Blocking of Highways
[Adopted 11-3-1982 by L.L. No. 1-1982]

§ 121-4. Definitions.

As used in this article, the following terms shall have the meanings indicated:

PARTY — A neighborhood block party, celebration or event as provided in the Town Law § 64, Subdivision 10-b, but shall not include a garage sale, yard sale, bazaar, rummage sale or other similar activity having the principal purpose of fund-raising for an individual or an organization, nor shall it include a political meeting or rally, carnival, theatrical or musical performances, such as rock concerts or similar events.

STREET — A Town street, highway or road.

§ 121-5. Permit required; application.

The Superintendent of Highways shall be authorized to issue a permit for the temporary blocking of a street for the purpose of holding a party. An application for such permit shall be filed with the Superintendent of Highways at least 21 days before the commencement of such party. Such application shall contain at least the following information: name and address of the applicant, name of the street or streets and a description of the portions thereof to be blocked, a description of the specific party to be held and the date and the hours thereof. The application may require such additional information as the Town Board shall prescribe by resolution.

§ 121-6. Fees; grant or denial of permit.

The application shall be accompanied by a fee of \$5 which shall not be refundable in the event the permit is denied. The permit shall be granted by the Superintendent of Highways upon determining that the party is authorized by Town Law § 64, Subdivision 10-b, and this article. The permit shall be denied if the Superintendent of Highways finds that blocking the street or portion thereof on the date requested in the application will unduly interfere with the flow of vehicular traffic or upon determining that the party is not authorized under Town Law § 64, Subdivision 10-b, and this article. The Superintendent of Highways shall advise the applicant in writing of the reason for denial of the application.

§ 121-7. Validity of permit.

A permit issued pursuant to this article shall be valid only for the date and the hours specified thereon, which shall not be before 7:00 a.m. and after 11:00 p.m.

§ 121-8. Removal of debris required.

The applicant shall be responsible for removal of litter, debris and other materials from the street or portion thereof used for the party which is attributable to or caused by the party.

§ 121-9. Obstacles to be easily moved.

A street or portion thereof blocked off for a party shall not be obstructed by obstacles which cannot be readily moved to allow emergency and hazard vehicles to enter it in response to an emergency.

§ 121-10. Number of permits limited.

No more than two permits shall be granted by the Superintendent of Highways in any calendar year for the same neighborhood.

Chapter 123

SUBDIVISION OF LAND

§ 121-10

[HISTORY: Adopted by the Town Board of the Town of Elma 4-27-1955; amended in its entirety 7-19-1989 by L.L. No. 1-1989. Amendments noted where applicable.]

§ 121-10

GENERAL REFERENCES

Planning Board — See Ch. 29.

Sewers — See Ch. 115.

Building construction — See Ch. 52.

Site plan review — See Ch. 117.

Flood damage prevention — See Ch. 82.

Stormwater management — See Ch. 120.

Mobile home parks — See Ch. 97.

Water — See Ch. 140.

Acreage lot development — See Ch. 100.

Zoning — See Ch. 144.

ARTICLE I
Authority for Subdivision Control
[Amended 6-14-2017 by L.L. No. 3-2017]

§ 123-1. Authorization of subdivision plat approval.

- A. By authority of Town Law § 276, the Town Board of the Town of Elma authorizes the Planning Board of the Town of Elma to review each plat for land subdivision within the Town and to recommend to the Town Board approval, approval with modifications, or disapproval in accordance with the procedures and standards herein after stated.
- B. This comprehensive amendment of the previously adopted land subdivision regulations allows the Planning Board, in part the authority to recommend approval, approval with modifications or disapproval of subdivision plats within the Town of Elma and to permit the assumption of all other powers and duties related thereto as prescribed by Town Law, Chapter 62 of the Consolidated Laws of the State of New York, with final approval resting with the Town Board. All subdivision plats hereinafter submitted to the Planning Board for approval shall be governed by and subject to the provisions of these amended regulations.
- C. In accordance with Article 9 of the Real Property Law, this amendment provides for endorsement of the approved subdivision plat by the Town Board prior to filing with the County Clerk.

ARTICLE II
Declaration of Policy
[Amended 7-10-1996 by L.L. No. 1-1996; 6-14-2017 by L.L. No. 3-2017]

§ 123-2. Declaration; objectives.

It is declared to be the policy of the Town of Elma Planning Board to consider land subdivision plats as part of a plan for the orderly, economic and efficient future growth and development of the Town. The following objectives may guide the Planning Board's decisions as related to the public health, safety and welfare:

A. Guidelines.

- (1) Lands to be subdivided and developed shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace.
- (2) Proper provisions shall be made for water supply, drainage, sewerage and other needed improvements and utilities.
- (3) All proposed development must be so designed as to be in harmony with the development pattern of adjacent properties.
- (4) Proposed streets shall compose a convenient system and shall be of such width, grade and location as to accommodate present and prospective traffic.
- (5) All development shall be designed to facilitate adequate fire and emergency protection and provide access for firefighting and related equipment.
- (6) Proper provisions may be made for permanent reservations of open spaces for parks and playgrounds and for the protection of natural drainage and significant historical and environmental features.
- (7) Future development may bear a fair share of the capital costs to the Town for municipal improvements servicing such new development.
- (8) Subdivision design should include referencing the information and direction provided in the Town's adopted Comprehensive Plan (the Regional Comprehensive Plan - RCP and/or the most recent Plan).

B. Requirements.

- (1) In areas of the Town not having sewers, all lots proposed in a subdivision must have a percolation rate (done in accordance with New York State and Erie County Health Department standards) at a minimum of one inch in 30 minutes or better.
- (2) No septic systems in fill are allowed.
- (3) Subdivisions are only allowed in the Residential A or Residential B zoning districts. Minor subdivisions may be allowed in the Residential C zoning district upon recommendation from the Planning Board and approval of the Town Board.
- (4) No more than 30 residences are allowed per farm plot except where public sewers are available.

ARTICLE III
Word Usage and Definitions
[Amended 4-15-2015 by L.L. No. 2-2015; 6-14-2017 by L.L. No. 3-2017]

§ 123-3. Word usage.

- A. Words used in the present tense include the future.
- B. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary.
- C. The word "shall" is always mandatory. The word "may" is permissive.
- D. A "building" or "structure" includes any part thereof. "Building or other structure" includes all other structures of every description, regardless of dissimilarity to conventional building forms.
- E. The phrase "used for" includes the phrases "arranged for," "designed for," "intended for," "maintained for" and "occupied for."
- F. The word "person" includes a partnership or corporation as well as an individual.
- G. The word "lot" includes the word "plot" or "parcel."
- H. The word "plat" means map or chart.

§ 123-4. Definitions.

For the purpose of these regulations, certain words and terms used herein are defined as follows:

CLERK OF THE PLANNING BOARD — That member of the Planning Board who shall be designated to perform the duties of the Clerk of the Planning Board for the purposes of these regulations.

COLLECTOR STREET — A street which carries traffic from local streets to the major system of arterial streets, including the principal entrance streets of a residential development and streets for circulation within such a development.

CUL-DE-SAC STREET — A street with only one means of vehicular ingress and egress and with a turnaround at its terminus.

DESIGNATED TOWN ENGINEER — That licensed professional engineer, either employee or consultant, who shall be chosen by the Town Board to perform the duties of the designated Town Engineer for the purposes of these regulations.

EASEMENT — An acquired right of use on the property of another for a specified purpose on a designated part of that property.

IMPROVEMENT — A physical change to the land or installation of certain services necessary to produce usable and desirable lots, blocks or sites from raw acreage, including, but not limited to, water and sewer, grading, pavement, curbs, gutters, storm sewers and drains and betterments to existing watercourses, sidewalks, street signs, shade trees, sodding or seeding and monuments.

LOCAL STREET — A street intended to serve primarily as access to abutting properties.

MAJOR ARTERY — An arterial street which serves or is designated to be used primarily for fast or heavy traffic.

MARGINAL ACCESS STREET — A local street which is parallel to and adjacent to a major artery and which provides access to abutting properties and protection from through traffic.

MASTER PLAN — A comprehensive plan for the general physical development of the Town of Elma, prepared by the Planning Board pursuant to Town Law⁶⁷ and which includes any unit or part of such plan separately adopted

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and any amendment to such plan or parts thereof.

§ 123-4

OFFICIAL MAP — The map which may be established by the Town Board under § 270 of the Town Law showing streets, highways and parks and drainage theretofore laid out, adopted and established by law, and any amendments thereto adopted by the Town Board of additions thereto resulting from the approval of subdivision plats by the Planning Board and the subsequent filing of such approved plats.

PLANNING BOARD — The Planning Board of the Town of Elma, Erie County, New York.

PRELIMINARY PLAT — The maps, drawings and charts showing the layout of a proposed subdivision, as specified in Article VII, § 123-20, of these regulations submitted to the Planning Board for approval prior to submission of the plat in final form and of sufficient detail to apprise the Planning Board of the layout and improvements of such proposed subdivision.

SKETCH PLAN — A sketch of a proposed subdivision showing the information specified in Article VII, § 123-19, of these regulations to enable the subdivider to save time and expense in reaching general agreement with the Planning Board as to the form of the layout and the objectives of these regulations.

STORMWATER MANAGEMENT OFFICER (SMO) — An employee or officer designated by the Town to accept and review stormwater pollution prevention plans, forward the plans to the applicable employee, officer, or board of the Town of Elma, and inspect stormwater management practices, as provided in Chapter 120, Stormwater Management, of this Code.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP) — A plan for controlling stormwater runoff and pollutants from a site during and after construction activities, as more particularly described in Chapter 120, Stormwater Management, of this Code.

STREET — A way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, thruway, road, artery, avenue, boulevard, lane, place, drive or however otherwise designated.

STREET PAVEMENT — The exposed surface of the roadway used by vehicular traffic.

STREET WIDTH — The width of the right-of-way or the distance between property lines on the opposite sides of a street, measured at right angles to the center line of such street.

SUBDIVIDER — Any person, firm, corporation, partnership or association which shall lay out for the purpose of development and/or sale of any subdivision as defined herein, either for himself, itself or for others.

SUBDIVISION — The division of any parcel of land into two or more lots, block plots, or sites, with or without new streets or highways, for the purpose of sale, transfer of ownership, or development. It also includes any alteration of lot lines or dimensions of any lots or sites shown a plat previously approved and filed in the office of the County Clerk. The definition of a "subdivision" excludes lots that are over five acres in size. The Town of Elma also further defines a subdivision as a minor or major subdivision as follows:

- A. **MINOR SUBDIVISION** — Any subdivision containing not more than four lots, each of said lots being at least the minimum lot area permitted by the Zoning Ordinance,⁶⁷ each fronting on an existing street, not involving any new street or road or the extension of municipal facilities, not adversely affecting the development of the remainder of the parcel of adjoining properties and not in conflict with any surrounding development or any provision or portion of the Master Plan, Official Map, Zoning Ordinance or these regulations.
- B. **MAJOR SUBDIVISION** — Any subdivision not classified as a minor subdivision, including, but not limited to, subdivisions of five or more lots or any size subdivision requiring any new street or extension of Town facilities.

SUBDIVISION PLAT or FINAL PLAT — The final maps, drawings and charts on which the subdivider's plan

67. Editor's Note: See NY Town § 1 et seq.

68. Editor's Note: See Ch. 144, Zoning.

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of subdivision containing all information or detail required by law and by these regulations is presented to the Planning Board for approval and which, if approved, will be submitted to the Erie County Clerk for filing or recording.

SURVEYOR, LAND — A person licensed as a land surveyor in the State of New York.

ARTICLE IV
Approval Procedure
[Amended 4-15-2015 by L.L. No. 2-2015; 6-14-2017 by L.L. No. 3-2017]

§ 123-5. Approval required.

Whenever any subdivision of land is proposed, and before any contract for the sale of or any offer to sell any lots in such subdivision or any part thereof is made, and before any permit for the erection of any structure in such proposed subdivision shall be granted, the subdivider or his duly authorized agent shall apply, in writing, for approval of such proposed subdivision in accordance with the following procedures.

§ 123-6. Preapplication and classification.

- A. Submission of a sketch plan. Any owner of land shall, prior to subdividing land, submit to the Town Clerk at least 10 days prior to the regular meeting of the Town Board two copies of a sketch plan of the proposed subdivision, which shall comply with the requirements of Article VII, § 123-19, of these regulations for the purposes of classification and preliminary discussion. The Town Board shall discuss the application and supply input to the owner. If the Town Board finds that this application is in general accordance with the Town's regulation, they then will refer it to the Planning Board for their input in accordance with the following.
- B. Discussion of requirements and classification.
 - (1) The subdivider or his duly authorized representative shall attend the meeting of the Planning Board to discuss the requirements of these regulations for street improvements, drainage, stormwater management, sewerage, water supply, fire protection and similar aspects, as well as the availability of existing services and other pertinent information.
 - (2) Classification of the sketch plan is to be made at this time by the Planning Board as to whether it is a minor or major subdivision as defined in these regulations. A notation regarding classification shall be made by the Planning Board directly on the sketch plan. The Planning Board may require, however, when it deems necessary for protection of the public health, safety and welfare, that a minor subdivision comply with all or some of the requirements specified for major subdivisions. If the sketch plan is classified as a minor subdivision, the subdivider shall then comply with the procedure outlined in Article IV, § 123-7, of these regulations. If it is classified as a major subdivision, the subdivider shall then comply with the procedures outlined in Article IV, §§ 123-8 and 123-9.
- C. Study of sketch plan. The Planning Board shall, within 30 days after submission, determine whether the sketch plan meets the objectives of these regulations and specific recommendations to be incorporated by the applicant in the next submission to the Planning Board and, in the case of a minor subdivision, obtain a review and recommendation from the Town Highway Superintendent, Water Superintendent and Town Engineer.
- D. Preapplication does not require formal application to the Planning Board or payment of a fee, nor does it permit filing of a plat with the County Clerk.

§ 123-7. Minor subdivision plat.

- A. Application and fee. Within six months of a classification by the Planning Board of a proposed subdivision as a minor subdivision, the subdivider shall submit an application for approval of a minor subdivision plat. The plat shall conform to the layout shown on the sketch plan, plus any recommendations made by the Town Board and Planning Board. Said application shall also conform to the requirements listed in Article VII, § 123-18. All applications for plat approval for a minor subdivision shall be accompanied by a fee as set by the Town Board by resolution from time to time.

- § 123-7
- B. Number of copies. The application for approval of a minor subdivision plat, complete with seven copies of the subdivision plat, shall be filed with the Clerk of the Planning Board. § 123-8
- C. Subdivider to attend Planning Board and Town Board meetings. The subdivider, or his duly authorized representative, shall attend meetings of the Planning Board and Town Board to discuss the proposed minor subdivision plat.
- D. Approval procedure.
- (1) The minor subdivision application shall be placed on the next available Town Board meeting agenda. (Submission must take place prior to the deadline for the Town Board Agenda.)
 - (2) The Town Board shall complete a cursory review of the application (with input from the Building Department) and refer the application to the Planning Board with any comments they have. If warranted, the Town Board could also begin the SEQR process by authorizing a coordinated review.
 - (3) The Planning Board, within 62 days of referral of the plan to them, shall act by resolution on the application. In the event the Planning Board does not act within the sixty-two-day period, the application will automatically be placed on the next Town Board agenda.
 - (4) The Planning Board shall either recommend approval, conditional approval with or without modifications, or disapproval of the plat. The Planning Board may also provide input on SEQR to the Town Board. The Planning Board shall specify, in writing, its supporting reasons for recommending approval with conditions or disapproval of the minor subdivision.
 - (5) The Town Board will receive the recommendation and make a SEQR decision on the minor subdivision. If a SEQR negative declaration is issued, the Town Board can set a public hearing on the application.
 - (6) Once the public hearing is scheduled, noticed and held in accordance with Town Law, the Town Board can act on the application; approve, approve with conditions, with or without modifications, or disapprove.

§ 123-8. Major subdivision preliminary plat.

- A. Application and fees.
- (1) Prior to the filing of an application for the approval of a major subdivision plat, the subdivider shall file an application for consideration with a preliminary plat for the proposed subdivision. Such preliminary plat shall be clearly marked "preliminary plat" and shall be in the form prescribed by Article VII, § 123-20, hereof. The preliminary plat shall, in all respects, comply with the requirements of §§ 276 and 277 of the Town Law and as set forth in these regulations, except where a waiver may be specifically authorized by the Town Board.
 - (2) Payment of a fee shall accompany all applications for approval of a preliminary plat. Plats for commercial, industrial or multifamily developments shall be accompanied by a fee, with a minimum fee for any subdivision application. All fees will be set by resolution of the Town Board from time to time.⁶⁹ Fees are not refundable and shall be in addition to fees charged by the Building Inspector or other Town agencies but shall not be duplicated by site plan review fees required under the Zoning Ordinance.⁷⁰
- B. Purpose. The preliminary plat and the supporting documents for a proposed subdivision constitute the material to be officially submitted to the Town Board. One copy shall later become the official record of the Town Clerk. They show the layout of the subdivision and its public improvement, so that the Town Board can indicate its approval or disapproval of the subdivision prior to the time that the final plat, including the

69. Editor's Note: The Fees Resolution is on file in the Town Clerk's office and may be inspected during regular business hours.

70. Editor's Note: See Ch. 144, Zoning.

- § 123-8 design and detailing of the public improvements and utilities, is completed. Approval of the preliminary plat does not constitute an approval of the final plat, nor should it be considered a valid basis for the construction of site improvements or other commitments which depend upon its design characteristics. § 123-8
- C. Number of copies. The application for approval of the preliminary plat, complete with seven paper copies of the preliminary plat, shall be filed with the Clerk of the Planning Board. A proposed submission which does not include all the required drawings and documents shall not be considered for such filing.
- D. Subdivider to attend Town Board and Planning Board meetings. The subdivider or their duly authorized representative shall attend the meeting of the Town Board and Planning Board to discuss the preliminary plat.
- E. Approval procedure.
- (1) Upon receipt of the preliminary plat application by the Town Clerk, the application shall be placed on the next available Town Board agenda.
 - (2) At the Town Board meeting, the Town Board shall review the application, provide input to the applicant, and refer the application to the Planning Board for their review, comment, and recommendation.
 - (3) The Town Board may also begin a SEQR coordinated review process by authorizing the mailing of SEQR lead agency documentation to appropriate interested and involved agencies.
 - (4) The application will then be placed on the next available Planning Board meeting agenda.
 - (5) The Planning Board, within 62 days of receipt of the referred action, shall, by resolution, either recommend to approve with or without modifications or recommend to disapprove such preliminary plat. The Planning Board shall also provide input to the Town Board on SEQR.
 - (6) The Town Board, based upon input from the Planning Board and, if requested, other involved and interested agencies, shall act in accordance with the State Environmental Quality Review Act.
 - (7) If the Town Board issues a negative declaration or conditioned negative declaration, then the application shall be considered complete and the Town Board shall schedule and hold a public hearing within 62 days of the complete application.
 - (8) If the Town Board decides that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the preliminary plat and the draft environmental impact statement shall be held jointly within 62 days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provision of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, the public hearing on the preliminary plat shall be held within 62 days of filing the notice of completion.
 - (9) Notice of the public hearing shall be advertised at least once in the official newspaper as legally designated by the Elma Town Board at least five days before such hearings. (If an EIS is required, follow SEQR requirements.)
 - (10) Within 62 days from the date of such public hearing, the Town Board shall act by resolution of the preliminary plat. The Town Board shall either approve, with or without modifications, or disapprove the preliminary plat.
 - (a) Notwithstanding the foregoing provisions, the time in which the Town Board must take action may be extended by mutual consent of the owner and the Town Board.
 - (b) When approving the preliminary plat, the Town Board shall state, in writing, the modifications and/or waivers under Article 9 of the Real Property Law that, if any, it deems necessary for submission of the plat in final form with respect to:

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- [1] The specific changes which it will require in the preliminary plat.
 - [2] The character and extent of the required improvements for which waivers may have been specifically requested and which, in its opinion, may be waived without jeopardy to the public health, safety, and general welfare.
 - [3] The categories of improvement or the amount of all bonds therefor, which the Town Board shall require as a requisite to approval of the final plat.
- (c) The action of the Town Board, plus any conditions attached thereto, shall be noted on three copies of the preliminary plat. One copy shall be returned to the subdivider, one copy shall be retained by the Planning Board and one forwarded to the Town Board through the Town Clerk for preliminary approval, disapproval, or modification.

§ 123-9. Major subdivision final plat.

A. Application.

- (1) Following approval, with or without modifications, of the preliminary plat, the subdivider shall prepare a final plat, together with all other supplementary documents, in accordance with Article VII, § 123-21, of these regulations.
- (2) The final plat and other supplementary documents shall be filed with the Clerk of the Town Board, together with a written application for final approval, within six months after approval, with or without modification, of the preliminary plat, unless such time limit is extended by mutual consent of the applicant and the Town Board.
- (3) Town Board action.
 - (a) Within 62 days from the date of such public hearing or from the date of submission of the final plat, if no such hearing is held, the Town Board, by resolution, shall either approve, conditionally approve, with or without modification, or disapprove the final plat and authorize the signing of such plat.
 - (b) If an SWPPP was submitted in accordance with § 123-21B(5) of these regulations, the Town Board shall not approve the final plat unless the plat and SWPPP comply with the requirements of Chapter 120 of this Code.

B. Partial development. If desired by the subdivider, the final plat may consist only of that portion of the approved preliminary plat which is proposed for recording and development at the time, provided that such portion conforms to all applicable requirements of these regulations and that the subdivision is being submitted for approval progressively in contiguous sections satisfactory to the Town Board.

C. Purpose. The final plat and the supporting documents for a proposed subdivision constitute the complete development of the subdivision proposal. After a public hearing, as required, and approval by the Town Board, this complete submission along with the performance bond and the general liability insurance policy, as approved by the Town Board, becomes the basis for the construction of the subdivision and the inspection services by the Town Board and by the Town Engineer or other delegated Town official or representative.

D. Number of copies. The application for approval of the final plat, complete with eight copies of the final plat, shall be filed with the Clerk of the Planning Board.

E. Approval procedure.

- (1) Upon receipt of the final plat application by the Town Clerk or Clerk of the Planning Board, the application shall be placed on the next available Town Board agenda.

- § 123-9
- (2) At the Town Board meeting, the Town Board shall review the application, provide input to the applicant, and refer the application to the Planning Board for their review, comment, and recommendation. § 123-9
- (3) The application will then be placed on the next available Planning Board meeting agenda.
- (4) The Planning Board, within 31 days of receipt of the referred action, shall, by resolution, either recommend to approve, with or without conditions, or recommend to disapprove such final plat.
- (5) If recommend for approval, the application shall then be considered complete, and the Town Board, at their next meeting, shall decide if a public hearing is required or not. (If the final plat is in substantial conformance with the preliminary plat, then a public hearing may not be required.) If a public hearing is required, a public hearing shall be held within 62 days of the complete application.
- (6) If a public hearing is required, a notice of public hearing shall be advertised at least once in a newspaper of general circulation in the Town of Elma at least five days before such hearings.
- (7) Within 62 days from the date of such public hearing (or referral by the Planning Board if no public hearing is held), the Town Board shall act by resolution on the final plat. The Town Board shall either approve, with or without conditions, or disapprove the final plat.
- (a) Notwithstanding the foregoing provisions, the time in which the Town Board must take action may be extended by mutual consent of the applicant and the Town Board.
- (8) Upon signature of all parties, the subdivision plat shall be filed by the applicant in the office of the County Clerk. Any major subdivision plat not so filed or recorded within 60 days of the date upon which such plat is approved or considered approved by reason of failure of the Town Board to act shall become null and void.
- (9) If conditional approval is granted, the Town Board shall empower a duly authorized person or persons to sign the plat upon compliance with such conditions and requirements as may be stated in its resolution of conditional approval. Within five days of the resolution granting conditional approval, the plat shall be so certified by the Clerk of the Planning Board (or Town Clerk) as conditionally approved and a copy filed in his office, and a certified copy mailed to the subdivider shall include a statement of requirements which, when completed, will authorize the signing of the conditionally approved plat. Conditional approval of a plat shall expire 180 days after the date of the resolution granting such approval unless the requirements have been certified as completed within that time. The Town Board may, however, extend the time within which a conditionally approved plat may be submitted for signature if, in its opinion such extension is warranted, for a period not to exceed two additional periods of 90 days each.
- F. Filing. Upon completion of the requirements in this section and those in §§ 123-11 and 123-12 of Article V and notation to that effect upon the subdivision plat, the subdivision plat shall be deemed to have final approval and shall be properly signed by the duly designated officer of the Town Board upon receipt of notification that the required bond and insurance has had the approval of the Town Attorney. The final plat may then be filed by the applicant in the office of the Erie County Clerk. Town Board approval of a final plat shall not be deemed an acceptance by the Town of any street or other land shown as offered for cession to public use.
- G. Expiration of approval.
- (1) The final approval of a final plat or the certificate of the Town Clerk as to the failure of the Town Board to act within the time required by law shall expire within 60 days after the date of the Town Board resolution authorizing the duly designated officer of the Town Board to sign the drawings, or from the date the certificate is issued unless filing of the plat or a section thereof is accomplished within that time period in the office of the Erie County Clerk in accordance with § 278 of the Town Law.
- (2) Expiration of an approval shall mean that any further action shall require payment of a new filing fee, as

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well as Town Board review of all previous findings. On and after such expiration of plat approval, any formal offers of cession submitted by the subdivider shall be deemed to be invalid, void and of no effect.

- H. Filing in sections. At the time the Town Board grants plat approval, it may permit the plat to be divided into two or more sections subject to any conditions the Board deems necessary in order to ensure the orderly development of the plat. In accordance with § 276 of the Town Law, the applicant may file a section of the approved plat with the County Clerk. In these circumstances, plat approval on the remaining sections of the plat shall continue in effect for a period of three years from the filing date of the first section. When a plat is filed by section with the County Clerk, the applicant shall, within 30 days, file with the Town Clerk the entire approved preliminary plat. The subdivider shall not be permitted to begin construction of buildings in any other section until such section has been filed in the office of the County Clerk and the required improvements have been installed and approved in such section or a bond covering the cost of such improvements has been posted.

ARTICLE V
Public Improvements

§ 123-10.1. Compliance required.

Any subdivider who proposes to develop a subdivision in the Town of Elma shall comply with the provisions of this article regarding the posting of bonds and the construction of utilities and other improvements.

§ 123-11. Required public improvements; design and installation standards; inspections.

In making determinations regarding the necessity and extent of the installation of public improvements, the Planning Board shall take into consideration the prospective character, density and uses in the proposed subdivision, whether residential, commercial or industrial.

- A. Required improvements. The Planning Board may require the installation of public improvements, including but not limited to the following public improvements, in accordance with Town Law:
- (1) Parks, playgrounds or other public open spaces of adequate size and location for recreational purposes.
 - (2) Paved streets and highways.
 - (3) Street signs and poles.
 - (4) Sidewalks.
 - (5) Streetlighting.
 - (6) Curbs and gutters.
 - (7) Street trees.
 - (8) Water mains and fire hydrants.
 - (9) Sanitary sewage disposal.
 - (10) Storm drainage system.
 - (11) Seeding or sodding of planting strips with lawn areas.
 - (12) Monuments suitably placed and installed.
- B. Standards for installation. All improvements as required by the Planning Board shall be installed in accordance with standards, specifications and procedures acceptable to the appropriate Town departments, as well as those provided in these regulations.
- C. Modifications of design of improvements. If, any time before or during construction of the required improvements, it is demonstrated to the designated Town Engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the designated Town Engineer may, upon concurrence of a previously delegated member of the Planning Board, authorize minor modifications which are within the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any of the improvements required by the Planning Board. The designated Town Engineer shall issue any such authorization under this provision in writing and shall transmit a copy of such authorization to the Planning Board at its next regular meeting.
- D. Inspection of improvements. At least five days prior to commencing construction of required improvements, the subdivider shall pay to the Town Clerk the inspection fee required by the Town Board and shall notify the Town Board, in writing, of the time when he proposes to commence construction of such improvements, so that the Town Board may cause such inspection to be made to assure that all Town specifications and

§ 123-11 requirements shall be made during the construction of required improvements and to assure the satisfactory completion of improvements and utilities as required by the Planning Board. § 123-12

- E. Proper installation of improvements. If the designated Town Engineer shall find, upon inspection of the improvements performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the subdivider, he shall so report to the Town Board, the Building Inspector and the Planning Board. The Town Board shall then notify the subdivider and, if necessary, the bonding company and shall take all necessary steps to preserve the Town's rights under the bond. No plat shall be approved by the Planning Board as long as the subdivider is in default on a previously approved plat.

§ 123-12. Performance bonds.

A performance bond or equivalent security shall be delivered to the Town to guarantee thereby to the Town that the subdivider shall faithfully cause to be constructed and completed within a reasonable time the required public improvements, and convey the required lands and improvements, where applicable, to the Town free and clear of all encumbrances.

- A. Procedure. Before the Planning Board grants final approval of the final subdivision plat, the subdivider shall follow the procedure set forth in either Subsection A(1) or (2) herein:
- (1) In an amount set by the Planning Board, the subdivider shall either file with the Town Clerk a certified check to cover the full cost of the required improvements, or the subdivider shall file with the Town Clerk a performance bond to cover the full cost of the required improvements. Any such bond shall comply with the requirements of § 277 of the Town Law and, further, shall be satisfactory to the Town Board and the Town Attorney as to form, sufficiency, manner of execution and surety. A period of one year or such other period as the Planning Board may determine appropriate, not exceeding three years, shall be set forth in the bond within which the required improvements must be completed. If the Planning Board shall decide, at any time during the term of the performance bond, that the extent of the building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such performance bond, or that the required improvements have been installed as provided in this article and by the Planning Board in a sufficient amount to warrant reduction in the face amount of said bond, or that the character and extent of such development requires additional improvements previously waived for a period stated at the time of fixing the original terms of such bond, the Planning Board may modify its requirements for any or all such improvements, and the face value of such performance bond shall thereupon be reduced or increased by an appropriate amount so that the new face value will cover the cost in full of the amended list of improvements required by the Planning Board, and any security deposited with the bond may be reduced or increased proportionately.
 - (2) The subdivider shall complete all required improvements to the satisfaction of the designated Town Engineer who shall file with the Planning Board a letter signifying the satisfactory completion of all improvements required by the Planning Board. For any required improvements not so completed, the subdivider shall file with the Town Clerk a bond or certified check covering the costs of such improvements and the cost of satisfactorily installing any improvement not approved by the designated Town Engineer. Any such bond shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution and surety.
- B. As-built drawing required. No required improvements shall be considered to be completed until the installation of the improvements has been approved by the designated Town Engineer and a map satisfactory to the Planning Board has been submitted indicating the location of monuments marking all underground utilities as actually installed. If the subdivider completes all required improvements according to provisions of Subsection A(2) above, then said map shall be submitted prior to endorsement of the plat by the authorized Planning Board officer. However, if the subdivider elects to provide a bond or certified check for all required improvements as specified in Subsection A(1) above, such bond or certified check shall not be released until

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such map is submitted.

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- C. Inspection of improvements. At least five days prior to commencing construction of required improvements, the subdivider shall pay to the Town Clerk the inspection fee required by the Town Board and shall notify the Town Board, in writing, of the time when he proposes to commence construction of such improvements so that the Town Board may cause such inspection to be made during the construction of required improvements and to assure the satisfactory completion of improvements and utilities as required by the Planning Board.
- D. Proper installation of improvements. If the designated Town Engineer shall find, upon inspection of the improvements performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the subdivider, he shall so report to the Town Board, the Building Inspector and the Planning Board. The Town Board shall then notify the subdivider and, if necessary, the bonding company and take all necessary steps to preserve the Town's rights under the bond. No plat shall be approved by the Planning Board as long as the subdivider is in default on a previously approved plat.

§ 123-13. Maintenance bonds.

The subdivider shall file with the Town Board a maintenance bond in an amount based on a maximum of 10% of the performance bond estimate and which shall be adequate to assure the satisfactory condition of the initial public improvements for a period of one year following completion and acceptance, where applicable, by the Town Board. Such bond shall be satisfactory to the Town Attorney as to form, manner or execution and surety and in an amount satisfactory to the designated Town Engineer.

§ 123-14. General liability insurance.

- A. Filing requirement. The subdivider shall file with the Town Attorney a general liability insurance policy at the same time he files his performance bond. The Town Board shall approve the policy as to form. The policy shall be in force during the term of the performance bond and shall be extended in conformance with any extension of the performance bond.
- B. Limits of coverage. The policy shall insure the Town, and the subdivider and shall cover all the operations in the development involving existence and maintenance of property and buildings and contracting operations of every nature involving all public improvements. Said policy shall have limits of liability of \$500,000 for bodily injury to each person and \$1,000,000 liability on the aggregate for each accident, and property damage liability of \$25,000 for each accident and \$50,000 aggregate property damage liability or such higher limits as the Planning Board may require. Said limits may be changed from time to time by resolution of the Town Board.

§ 123-15. Public utilities.

- A. When public utilities are to be installed, the subdivider shall submit to the Planning Board written assurances from each public utility company that such company will make the necessary service installations within a time limit and according to specifications satisfactory to the Planning Board.
- B. The final plat shall show statements by the owner granting all necessary easements or other releases where required for the installation of public utilities.

ARTICLE VI

General Requirements and Design Standards**[Amended 10-16-1991; 12-18-1996; 4-15-2015 by L.L. No. 2-2015; 6-14-2017 by L.L. No. 3-2017]****§ 123-16. General requirements.**

The subdivider shall observe all general requirements for land subdivision as herein provided.

- A. Character of land. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace and with a minimum of detrimental effects on the environment.
- B. Preservation of natural features. The Planning Board may require the preservation of all natural features which add value to residential developments and to the community, such as large trees or wooded areas, watercourses, historic spots and similar irreplaceable assets.
- C. Conformance with Official Map and Master Plan. Subdivision plats and improvements provided shall conform to the Official Map and Zoning Ordinance⁷¹ of the Town of Elma and shall be in harmony with the Town Master Plan.
- D. Minimum lot. No lot area in a subdivision shall be less than the minimum required by the Zoning Ordinance for the district in which it is located, unless otherwise provided in the Zoning Ordinance or as provided within Article VIII of this chapter. The Planning Board shall be authorized to designate a lesser frontage than required by the Zoning Ordinance for the district in which it is located, provided that the Planning Board may not reduce said frontage of an approved lot to less than 90% of the frontage minimum required in said district. A full lot on a cul-de-sac shall be a minimum of 90 feet road frontage.
- E. Plats with access through other municipalities. Whenever access to a subdivision is by crossing land in another municipality, the Planning Board may require certificates from authorities having appropriate jurisdiction that such access is adequately improved or that a legally adequate performance bond has been duly posted and is sufficient in amount to assure the construction of the necessary road or roads.
- F. Replatting. Replatting of all or part of the land covered by an existing plat which has been laid out prior to compulsory filing shall comply with these regulations as now required.
- G. Preservation of topsoil. No topsoil shall be removed from any subdivision in the Town. In the case where there are areas over which heavy equipment will be operated, the topsoil may be stripped and piled on the property. When final grades have been completed, the entire property shall be suitably graded and recovered with topsoil to a depth of at least four inches after rolling, except that portion covered by buildings or included in the roads.
- H. Watercourses. Where a watercourse separates a proposed street from abutting property, provisions shall be made for access to all lots by culverts or other permanent structures. Where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way not less than 30 feet in width. All such structures and rights-of-way shall be of design and specification approved by the designated Town Engineer and the Town Highway Superintendent.
- I. Flood hazard.
 - (1) If any portion of the land within the subdivision is subject to periodic inundation or flood hazard caused by stormwater, this portion shall be clearly indicated on any subdivisions required by these regulations. In cases of doubt, the Planning Board may require submission of a flood hazard study delineating the limits of the one-hundred-year floodplain. Such study shall be conducted by a licensed professional

71. Editor's Note: See Ch. 144, Zoning.

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engineer.

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- (2) Lands subject to flooding and land deemed by the Planning Board to be otherwise uninhabitable shall not be platted for residential occupancy nor for any such other use that may increase danger to health, life or property, or aggravate the flood hazard.
- (3) Any subdivision, including all proposed improvements and construction, must comply with all applicable provisions of the National Flood Insurance Act of 1968, including all amendments thereto.

§ 123-17. Design standards.

The subdivider shall conform to all subdivision design standards as herein provided. These standards shall be considered minimum standards and shall be varied from or waived only as provided for in Article IX of this chapter.

A. Lots.

- (1) Lots to be buildable. The lot arrangement shall be such that, in constructing a building in compliance with the Zoning Ordinance,⁷² there will be no foreseeable difficulties for reasons of topography or other natural conditions.
- (2) Deep lots. Lots shall not be of unreasonable depth, but, if such depth is unavoidable, provisions should be made whenever possible in the layout of the subdivision for streets which may be added later through resubdivision to serve the development of the rear portion of such deep lots.
- (3) Corner lots. Corner lots shall be of sufficient dimensions so that any structure placed thereon shall conform to the building setback line on both streets, as well as side yard requirements, for the zoning district in which the lot is located.
- (4) Double-frontage lots. Lots whose front and rear lot lines abut two separate and approximately parallel streets should be avoided except in residential areas abutting major arteries. In such cases, a planting screen easement at least 10 feet wide with no right of access to the lot shall extend along the lot line abutting the major artery right-of-way.
- (5) Minimum lot size. Each lot shall be no smaller than the minimum size required by the Zoning Ordinance for the district in which it is located. The minimum lot width, measured at the point where the property line meets the road right-of-way line, must be the minimum lot width required by the Zoning Ordinance for the district in which it is located, unless extreme hardship is demonstrated, in which case the Planning Board shall have discretion to reduce said minimum in accordance with § 123-16D.
- (6) Side yard lines. All side yard lines of lots shall be substantially at right angles to straight street lines and radial to curved street lines.
- (7) Driveway access. Whenever possible, lots shall be laid out so that driveways have access to a street which is intended to carry out the least traffic. Driveway grades between the street pavement and the building setback line shall not exceed 10%.
- (8) Access from public streets.
 - (a) The subdividing of land shall be such as to provide, by means of public street, each lot with satisfactory access to an existing public street for construction within the subdivision.
 - (b) Double-frontage and reverse-frontage lots should be avoided. Reverse-frontage lots, which have their rear yard abutting a collector or major street, shall be provided with effective natural screening along the full width of the rear property line to screen the rear yard from adjacent traffic.

72. Editor's Note: See Ch. 144, Zoning.

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- (c) A lot of less than 200 feet frontage fronting on a county or state highway may be designed as to share a common curb cut with an adjacent lot, if either adjacent lot has not been previously granted a curb-cut permit. When more than three lots are proposed to be subdivided from a parcel with frontage on a county or state highway, or there is a possibility of creating four or more lots equal in size to the average area of the lots proposed for subdivision, frontage for all such lots shall be on internal streets, not on the county or state highway. Each lot permitted to front on a county or state highway shall provide for an improved on-site turnaround so as to obviate the necessity of any vehicle backing onto such highway.
- (9) Access from private streets. Access to a subdivision from private streets, as provided under § 280-a of the Town Law, shall be deemed acceptable only if such private streets are designed and improved in accordance with Subsection B of this section and if said private streets are transferred to the Town and accepted by the Town Engineer and Highway Superintendent prior to or at the same time as final acceptance of the subdivision itself.
- (10) Block design. Each block shall normally be designed to provide two rows of lots, but irregularly shaped blocks indented by cul-de-sac streets and which contain interior parks will be acceptable when properly designed and if the maintenance of such interior parks is provided for in covenants and agreements acceptable to the Planning Board.

B. Streets.

- (1) General objectives. Streets shall be of sufficient width, suitably located and adequately constructed to conform to the Town Master Plan and to accommodate the prospective traffic and afford access for firefighting, snow removal and other road maintenance equipment. The arrangement of streets shall be coordinated such that they compose a convenient system, cause no undue hardship to adjoining properties and render no property inaccessible from an existing public street or from a proposed street in a subdivision for which a completion bond has been posted.
- (2) Arrangement.
 - (a) The arrangement of streets in the subdivision shall provide for the continuation of principal streets of adjoining subdivisions, and for proper projection of principal streets into adjoining properties which are not yet subdivided, by use of stub streets in order to make possible necessary fire protection, movement of traffic and the construction or extension, presently or when later required, of needed utilities and public services, such as sewer, water and drainage facilities. Where, in the opinion of the Planning Board, topographic or other conditions make such continuance undesirable or impracticable, the above conditions may be modified.
 - (b) The subdivision street traffic network shall provide an orderly local access progression from marginal streets to collector street to main highways and shall include a continuous network of public pedestrian walks, either independent or incorporated within vehicular rights-of-way, to connect all properties and public areas.
- (3) Street widths.⁷³
- (4) Pavement, drains and culverts. All pavement, gutters, drains, culverts and other street improvements required by the Planning Board shall conform to Town specifications, which are available in the Town Clerk's office.
- (5) Marginal access streets. Where the proposed subdivision contains or is adjacent to an existing or proposed major arterial street, the Planning Board may require marginal access streets, reverse frontage with screen planting contained in nonaccess reservation along the rear property line or such other

73. Editor's Note: See Town Design Standards on file in the Town Clerk's office.

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treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

- (6) Local streets. Local streets shall be laid out in a manner to discourage their use by through traffic. Local and collector street openings onto a major artery shall normally be at least 500 feet apart.
- (7) Street connections. Subdivisions containing 50 lots or more shall have at least two connections with existing public streets, with streets shown on the Official Map, if such exists, or streets on an approved subdivision plat for which a bond has been filed.
- (8) Grades and curves. Grades of all streets shall conform to the general terrain and shall be no less than 1/2 of 1% nor more than 7%. Where a grade of 1/2 of 1% cannot be achieved, reduction may be considered if both street curves and a smooth-wearing surface are provided.
- (9) Street trees. At least two street trees, having a minimum one-and-one-half-inch caliper trunk and an eight-foot height, shall be planted on each lot.

C. Parks and public open space. Adequate land for parks and other public open space purposes shall be provided in any subdivision of five or more lots throughout the Town of Elma.

- (1) Amount of land dedicated.
 - (a) In general, the Planning Board may require that not less than one acre of park and public open space land per 20 dwelling units be shown on the plat. However, in no case shall the amount required be more than 10% of the total area of the subdivision.
 - (b) The minimum area of contiguous public open space acceptable for this use may be one acre. A smaller open space may be approved by the Planning Board if the difference in area between the space offered and the one-acre minimum may be provided by future subdivision of adjacent land. All lands designated on the plat as park or open space area shall be subject to such conditions as the Planning Board may establish on the subdivision concerning access, use and maintenance of such lands as deemed necessary to assure the preservation of the land, in perpetuity, for their intended purposes. Such conditions shall be clearly noted on the plat prior to plat approval and recording.
- (2) Information to be submitted. In the event that an area to be used for park or public open space is required to be shown, the subdivider shall submit, prior to final approval, to the Planning Board drawings at a scale of not less than 20 feet to the inch of such area and the following features thereof:
 - (a) The boundaries of said area, giving lengths and bearings of all straight lines, radii, lengths, central angles and tangent distances of all curves.
 - (b) Existing features, such as streams, ponds, clusters of trees, rock outcrops and structures.
 - (c) Existing and, if applicable, proposed changes in grade and contours of said area and of the area immediately adjacent.
 - (d) Plans for improvements of said area, not limited to grading, seeding, fencing, landscaping and the provisions for play and related equipment.
- (3) Payment in lieu of dedication. In cases where, because of size, topography or location of the subdivision, the requirement for land dedication or reservation for parks and public open spaces would be unreasonable or undesirable, the Planning Board may alternately require, under § 277 of the Town Law, that a payment be made into a special fund for Town recreation site acquisition and improvement in lieu of such land dedication. Such payment shall be a condition of approval of the plat and be in the sum of \$250 per proposed dwelling unit in the project or such sum as may be set by resolution of the Town

§ 123-17 Board from time to time. No plat shall be signed by the authorized officer of the Planning Board until such payment is made. § 123-17

D. Public improvements and utilities. See Detail AA.⁷⁴

- (1) Placement. Underground public improvements required by the Planning Board in accordance with Article V § 123-11, and public utilities shall be placed in the street rights-of-way between the street paving and the sidewalk, if one exists, or between the street paving and right-of-way line. Where topography makes such placement impractical, perpetual unobstructed easements at least 15 feet in width shall be provided for along lot frontages abutting the street lines, with satisfactory access to the street. Wherever possible, easements shall be continuous from block to block, and their layout shall be as regular as possible. Subject to the discretion of the Town Board, an underground public improvement or utility operated for revenue by the Town or by a special district may be installed by the Town in a private street, provided that a public easement of satisfactory size is obtained for such improvement or utility. Before the street is paved, the subdivider shall install underground service connections for all required public improvements to the property line of each lot within the subdivision.
- (2) Water.
 - (a) The subdivider shall connect to the closest existing watermain to his subdivision. No subdivision shall be approved unless plans demonstrate the availability of a water supply of a dependable quantity adequate for all domestic purposes, and meet all considerations of fire protection requirements. All Health Department requirements must be adhered to as per the Pure Waters Act⁷⁵ and recommended standards for waterworks of the State of New York Health Department. Only materials approved and accepted by the American Water Works Association can be used in construction of the watermains.
 - (b) The subdivider shall perform all requirements at his own expense.
- (3) Sanitary sewers.
 - (a) Where an appropriate public sanitary sewer system is reasonably accessible, the subdivider shall install at his expense the necessary connections into the system and provide a sewer connection for each lot.
- (4) Septic tank systems. Where an appropriate sanitary sewer system is not reasonably accessible but where the plans for the sanitary sewer district, including lands on which the subdivision is located, have been prepared, the subdivider, at his expense, in addition to installing sanitary sewers in conformity with those plans for eventual connection with a trunk sewer, shall provide private septic tank systems which shall conform to the requirements of the Erie County Health Department and of all other authorities having jurisdiction. The Planning Board shall ascertain that such lots shall be of sufficient size to provide adequate leaching fields for satisfactory performance of the system.
- (5) Storm and drainage sewer system.
 - (a) The subdivider shall install all necessary storm drainage sewers and appurtenant facilities at his expense, in accordance with standards of the Town and of all authorities having jurisdiction. Where an appropriate storm drainage system is reasonably accessible, the subdivider shall make proper connection thereto, otherwise the subdivider shall provide appropriate means and methods for stormwater runoff satisfactory to the Planning Board and all other authorities having jurisdiction. Any such means and methods for stormwater runoff shall comply with any SWPPP approved by the Town for the subdivision.

74. Editor's Note: Detail AA is in the Town highway specifications, which are on file in the Town Clerk's office and may be inspected during regular business hours.

75. Editor's Note: See the Pure Waters Bond Act, NY Uncon Laws § 7371 et seq.
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- (b) Where storm sewers are provided, the storm sewers shall generally be installed 12 feet from the right-of-way line on the same side of the street as the water main. Size is to be determined in consultation with the designated Town Engineer and Highway Superintendent.
- (c) The drainage system shall be large enough to accommodate potential runoff from the entire upstream drainage area, whether inside or outside of the subdivision. The designated Town Engineer shall approve the design and the size of the facilities based on anticipated runoff from a twenty-year storm under conditions of total potential development permitted by the Zoning Ordinance⁷⁶ in the watershed.
- (d) The subdivider's engineer shall also study and report on the effect of each subdivision on the existing downstream drainage system outside the area of the subdivision, and this report shall be reviewed by the designated Town Engineer. When it is anticipated that the additional runoff incident to the development of the subdivision will overload an existing downstream drainage facility during a twenty-year storm, the Planning Board shall notify the Town Board of such potential condition. In such case, the Planning Board shall not approve the plat until provision has been made for the improvement of said condition.
- (e) Subdivisions shall be designed and constructed in accordance with any SWPPP approved by the Town.

E. Pedestrianways.

- (1) Sidewalks on collector roads. All streets which may be designated as collector roads may be required to have a five-foot-wide sidewalk on both sides of the street. All such sidewalks shall be so placed that there will be a distance of three feet between the sidewalk and the street paving and a distance of four feet between the inner edge of the sidewalk and the right-of-way line. Planting of street trees will be permitted in the space between the sidewalk and the right-of-way only.
- (2) Sidewalks on local streets. All local streets may be required to provide a sidewalk on one or both sides of the street at the discretion of the Planning Board. Such sidewalk shall be located as follows:
 - (a) When a sidewalk is to be provided along only one side of a local street, the street paving shall be offset from the right-of-way center line by eight feet. The sidewalks shall be five feet in width and so placed that there will be a distance of three feet between the sidewalk and the right-of-way line. Planting of street trees will be permitted in the space between the sidewalk and the right-of-way only.
 - (b) When sidewalks are to be constructed along both sides of a local street, the paving shall be centered within the right-of-way. Each sidewalk shall be five feet in width and so placed that there will be a distance of three feet between the sidewalk and the street paving and a distance of four feet between the inner edge of the sidewalk and the right-of-way line. Planting of street trees will be permitted in the space between the sidewalk and the right-of-way only.

76. Editor's Note: See Ch. 144, Zoning.

ARTICLE VII
Submission Requirements

§ 123-17.1. Submission of plats and documents for approval.

Any subdivider who proposes to develop a subdivision in the Town of Elma shall submit plats and other documents for approval as provided in this article.

§ 123-18. Minor subdivision plat.

In the case of a minor subdivision only, the subdivision plat application shall include the following information:

- A. An area map showing the location of that portion of the tract which is to be subdivided in relation to the entire tract, and showing the distance to the nearest street intersection. The drawing of the entire tract may be by either deed plot or actual survey.
- B. An actual field survey of the boundary lines of the tract being subdivided, giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The corners of the tract shall also be located on the ground and marked by monuments as approved by the Planning Board, and shall be referenced and shown on the plat. The Planning Board may modify the requirement for a full field survey pursuant to Article VIII, § 123-24, of these regulations.
- C. Information concerning portions of the land within the subdivision subject to periodic inundation by stormwater or in a wetlands area.
- D. A copy of such covenants or deed restrictions as are intended to cover all or part of the tract.
- E. All on-site sanitation and water supply facilities shall be designed to meet the minimum specifications of and be under the permit of the Erie County Department of Health. Evidence of contact with the Health Department shall be available.
- F. The proposed subdivision name, Town of Elma, Erie County, New York.
- G. The date, North point, map scale, name and address of record owner and subdivider.
- H. A description in metes and bounds of a drainage district covering the entire subdivision for use by the Town Attorney.
- I. A SWPPP, if required for the proposed subdivision under Chapter 120 of this Code, together with the recommendation of the SMO to approve, approve with modifications, or disapprove the SWPPP pursuant to § 120-4B of this Code. **[Added 4-15-2015 by L.L. No. 2-2015]**

§ 123-19. Major subdivision preapplication.

The preapplication sketch plan initially submitted to the Planning Board shall be based on Tax Map information or some similarly accurate base map at a scale of not less than 200 feet to one inch. The entire sketch plan shall be shown on one sheet. The sketch plan may show the following information according to the Planning Board:

- A. A vicinity map showing the location of that portion of the tract which is to be subdivided in relation to the entire tract and the distance to the nearest street intersection. All streets shall also be shown within 300 feet of the applicant's property.
- B. All existing structures, wooded areas, streams and other significant physical features, within the portion to be subdivided and within 200 feet thereof. If topographic contours are significant, contours shall also be indicated at intervals of not more than 10 feet. All elevations are to be referred to United States Geological Survey datum with the location and description of bench marks included.

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- C. A general statement of soils conditions.
- D. The name of the owner and of all adjoining property owners as disclosed by the most recent Town assessment records. Property owners across the street shall also be shown.
- E. The Tax Map sheet, block and lot numbers, as available from the Town Assessor's office.
- F. All the utilities available and all streets which are either proposed, mapped or built.
- G. The proposed pattern and numbers of lots (including lot width and depth), street layout, recreation areas, systems of drainage, sewerage and water supply within the subdivided area.
- H. Information on all existing restrictions on the use of land, including easements, covenants or zoning district boundaries.
- I. All portions of the land within the subdivision subject to periodic inundation or flooding by stormwater, including wetland areas.

§ 123-20. Major subdivision preliminary plat.

- A. Six copies of the preliminary plat certified to by a licensed land surveyor and/or professional engineer at a scale of not more than 100 but preferably not less than 50 feet to one inch shall be submitted at least 10 days prior to the regular meeting of the Planning Board.
- B. The preliminary plat shall show or be accompanied by the following additional information: **[Amended 4-15-2015 by L.L. No. 2-2015]**
- (1) Information on existing site conditions, required:
 - (a) An actual field survey of the boundary lines of the tract to be subdivided, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall also be located on the ground and marked by substantial monuments of such size and type as approved by the Town Planning Board and shall be referenced and shown on the plat.
 - (b) Street rights-of-way and widening of rights-of-way on the subdivision and within 200 feet of its boundaries, including the name and right-of-way width and location; type, width and elevation of surfacing; any legally established center-line elevations, including those at intersections and other critical points; and walks, gutters, curbs, culverts and related improvements.
 - (c) The location, width, identification, purpose and restrictions upon any other rights-of-way and easements on the subdivision.
 - (d) Drainage structures on the subdivision and within 200 feet of its boundaries, including the type of structure and location, invert elevations, gradients, types and sizes of all pipes and all other drainage structures where applicable, including direction of flow.
 - (e) The location and size or capacity of all other utility structures, such as sewer, water, gas mains and power lines on the subdivision, and within 200 feet of its boundaries.
 - (f) As contours affect proposed public improvements, ground elevations on the tract shall be based on a datum plane approved by the designated Town Engineer. For land with a slope that is less than approximately 2%, spot elevations should be shown at all breaks in grade, along all drainage channels or swales and at selected points not more than 100 feet apart in all directions; and for land that slopes more than 2%, contours should be shown at intervals of not more than two feet.
 - (g) Marshes, ponds, streams and all land subject to periodic or inundation flooding or similar unstable

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conditions on the subdivision or within 200 feet of its boundaries. Indicated shall be the location and area covered indicating the apparent high-water line on the date of survey, the survey date and the maximum depth of the water at critical points.

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(2) Existing site conditions, at the discretion of the Planning Board:

- (a) Subsurface data in accordance with Erie County Health Department requirements, including the date, location and graphic representation of findings for all test holes, including the location and results of percolation and other tests to ascertain subsurface soil, rock and groundwater conditions, and the depth of groundwater unless pits are dry at a depth of five feet.
- (b) Photographs which include camera locations, directions of views and key numbers.
- (c) The location of rock outcrops, wooded areas, isolated preservable trees, structures and other significant existing features for the proposed subdivision area and within 200 feet thereof.
- (d) The soil map and report by the Soil Conservation Service.

(3) Proposed site development, required:

(a) Streets.

- [1] The name, to be checked prior to submission with the Town Clerk to avoid duplication.
- [2] The width and location of any streets or public ways or places shown on the Official Map, within the area to be subdivided, together with street profiles of all streets or public ways proposed by the developer.
- [3] The right-of-way width.
- [4] Tentative center-line elevations at intersections and at principal changes in gradient.
- [5] The tentative center-line gradient shown in percent of slope.
- [6] Plans and cross sections showing the proposed location and type of sidewalks, streetlighting standards, street trees, curbs, water mains, sanitary sewers and storm drains and the size and type thereof, the character, width and depth of pavements and subbase and the location of manholes, basins and underground conduits.
- [7] Preliminary designs of any bridges which may be required.

(b) Lot layout.

- [1] Lot lines and dimensions scaled to the nearest foot.
- [2] The minimum building setback lines and dimensions and the suggested location of buildings and driveways.
- [3] Lot numbers and lot areas measured to the nearest square foot.

(c) Easements, parks, restricted areas and other improvements:

- [1] The purpose and restrictions.
- [2] The designation of areas of rights-of-way, which are to be offered for public dedication or deeded to homeowners' associations or other private corporations with clear indication of proposed changes in grades and landscaping thereon. The Board may require special recreational improvements and planting of trees, shrubs, grass and other landscaping in all areas to be so dedicated.

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(d) Preliminary stormwater drainage system plan:

- [1] Drainage structures shall be shown on the preliminary plat indicating the approximate location and size of proposed lines and culverts and their profiles, including connection to existing storm systems or alternate means of disposal.
- [2] Outline of watersheds tributary to drainage structures and their approximate area in acres, including those which extend beyond the boundaries of the subdivision.

(e) Preliminary water supply and sewage treatment systems: the approximate location, size and profiles of all proposed waterlines, valves, hydrants and sewer lines and fire alarm boxes. Connection to existing lines or sewage disposal and treatment shall be as provided in the Public Health Law.

(f) Private septic systems: a map showing the exact location of percolation test holes, bore holes and the location of proposed tile fields shall be shown on each lot on the subdivision map.

(g) Easements. Where the topography is such as to make difficult the inclusion of any of the required facilities and improvements within the public areas as laid out, the preliminary plat shall show the boundaries of proposed permanent easements over or under private property.

(h) Covenants or deed restrictions: a copy of all such covenants or deed restrictions as are intended to cover all or part of the tract.

(i) Temporary markers. The Planning Board may require the location of temporary markers adequate to enable the Planning Board to locate readily and appraise the basic layout in the field, including markers at the corners of the tract. Unless the subdivision is adjacent to an existing street intersection, the distance along a street from one corner of the property to the nearest existing street intersection shall be shown.

(4) Stormwater management information:

(a) A SWPPP, if required for the proposed subdivision under Chapter 120 of this Code; and

(b) The recommendation of the SMO to approve, approve with modifications, or disapprove the SWPPP pursuant to § 120-4B of this Code.

§ 123-21. Major subdivision final plat.

A. Ten paper copies and five linen or Mylar copies of the final plat, certified by a licensed land surveyor and/or professional engineer at a scale of not more than 100 but preferably not less than 50 feet to one inch, shall be submitted at least 10 days prior to the regular meeting of the Planning Board.

B. The final plat shall show or be accompanied by the following information: **[Amended 4-15-2015 by L.L. No. 2-2015]**

(1) The lot map of the entire subdivision, which shall be the same as that required on the preliminary plat with the following additions:

(a) Lot layout.

[1] The number identification by a suitable system of consecutive numbers circled and related to the Town Tax Maps.

[2] Lot lines with accurate dimensions to the nearest 1/10 of a foot and bearing to the nearest five seconds.

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[3] The minimum building setback lines dimensioned.

(b) Special parcels.

[1] A description of proposed action and use, including a note wherever an offer of dedication is being made. For any land which is reserved by the developer or to a homeowners' association, there shall be submitted with the subdivision plat copies of agreements showing the manner in which such areas are to be maintained and the provisions made therefor.

[2] Boundary lines with accurate dimensions to the nearest 1/10 of a foot and bearings to the nearest five seconds.

[3] Lot areas for each lot measured accurately to the nearest square foot.

(2) Survey data.

(a) Accurate tract boundary lines with bearings and distances.

(b) A survey tie-in with accurate bearings and distances to the nearest established street monuments or other official monuments, which are within reasonable distance of the property. When referenced to the state system of plane coordinates, they shall also conform to the requirements of the State Department of Transportation. They shall be placed as required by the Planning Board, their location noted and referenced upon the plat.

(c) Special district boundaries as they affect the subdivision, referenced to the subdivision survey by accurate bearings and distances.

(d) The length of all straight lines, the deflection angles, radii, length of curves and central angles of all curves, tangent distances and tangent bearings for each street.

(e) Accurate dimensions to the nearest 1/10 of a foot.

(f) Monuments.

[1] The accurate location of all monuments, existing, proposed or to be reset, shall be shown.

[2] Monuments shall be of a type approved by the Planning Board and shall be set at all corners and angle points of the boundaries of the original tract to be subdivided and at all street intersections, angle points in street lines, points of curve and such intermediate points as may be required. Monuments shall be located at the beginning and end of each curve along one side of the street right-of-way.

(3) Public improvement plan and profiles:

(a) The performance bond and required inspections, based on these drawings, the final plat itself, these subdivision regulations and other applicable Town specifications for such public improvements and utilities.

(b) Unless a specific waiver requested and granted in writing, the public improvements and utilities to be considered to comply specifically with these subdivision regulations and the other applicable Town specifications for such public improvements and utilities.

(c) Basic drawing layout requirements, the same as those required for the preliminary plat and also to include rights-of-way, gradients and directional arrows downhill.

(d) Designs for waterlines, sewers, streets, bridges and drainage structures, prepared by a licensed professional engineer.

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- (e) Complete drainage systems for the entire subdivision, with appropriate development staging for each of the final plat sections, shown graphically and related to all existing drainage features.
 - (f) Utility system requirements:
 - [1] Water supply and distribution:
 - [a] The location of the source on the property or where piped in and the size of the supply main.
 - [b] The location and size of all distribution mains.
 - [c] The location of fire hydrants.
 - [d] The location of control valves.
 - [2] Sanitary waste disposal systems.
 - [a] Sanitary sewer system design to be indicated in all cases where public or private sewer connections exist or are proposed.
 - [b] A typical lot layout, indicating the location of individual systems, where appropriate, with reference to house and water supply, and a detailed drawing of a proposed sanitary waste disposal system.
 - [c] Individual private septic systems, including the tile fields, to be located on each individual lot.
 - [3] The location of electric, telephone, cable television, gas and other energy-related lines.
 - [4] The location and description of outdoor lighting.
 - (g) Profile drawing requirements:
 - [1] Drawings prepared with a horizontal scale of one inch equals 50 feet and a vertical scale of one inch equals 10 feet, unless otherwise approved by the Planning Board.
 - [2] All profiles showing the existing natural grades, the typical cross section of existing or proposed roads, the center-lines of intersecting roads and a system of survey stations.
 - [3] The center-line profile of all proposed roads with dimensions on vertical curves and notations as to gradient and critical elevations.
 - [4] Detailed plans for bridges, culverts or similar structures.
 - [5] The invert profile and location of all storm and sanitary drainage structures (manholes, catch basins, etc.) in street rights-of-way, drainage or other easements.
 - (h) Recreation and community improvements.
 - (i) Landscape plans prepared by a licensed landscape architect and/or an architect indicating proposed changes in existing grades and landscaping, including the following items: play areas, walkways, incidental shelters, lighting, walls, new trees, shrubs (location, caliper and botanical name) and other required improvements.
- (4) Certifications.
- (a) Adequate proof of the title showing that the applicant is the owner.

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- (b) Written offers of cession to the Town for public streets, public improvements, rights-of-way and open spaces shown on the subdivision plat and copies of agreements or other documents showing the manner in which open spaces, the title of which is reserved by the subdivider, are to be maintained. All offers of cessions and covenants governing the maintenance of unceded open space shall bear the certificate of approval of the Town Attorney as to their legal sufficiency.
 - (c) A certificate by the designated Town Engineer certifying that the subdivider has complied with one or both of the following alternatives:
 - [1] All or part of the improvements have been installed in accordance with the requirements of these regulations and with the action of the Planning Board granting approval of the preliminary plat.
 - [2] A performance bond or equivalent security in sufficient amount to assure completion of all required improvements has been filed with the Town Clerk.
 - (d) Protected covenants and other appropriate devices in form for recording.
 - (e) Notification of various organizations:
 - [1] The applicant shall apply, in writing, to the following organizations and to any other organizations as directed by the Planning Board for:
 - [a] Letters directed to the Chairman of the Planning Board and signed by a responsible official or any governmental authority or district which must provide necessary utility service, approving the utility installation design and assuring that adequate service will be available to accommodate the needs of the subdivision.
 - [b] Letters directed to the Chairman of the Planning Board signed by a responsible official of the school system acknowledging the number of proposed residential lots and indicating the availability of existing school facilities for the prospective new pupils, or any needed new school sites and facilities that relate to the subdivision area.
 - [c] Letters directed to the Chairman of the Planning Board signed by a responsible official of the local Fire Department acknowledging the number of residential lots.
 - [d] Letters, in appropriate cases, directed to the Chairman of the Planning Board signed by a responsible official of the State Department of Transportation or the Erie County Highway Engineer approving proposed construction and access on state or county rights-of-way, respectively.
 - [2] In any of the above instances, if no response is received within 30 days of the applicant's request, the Planning Board may require proof that notification was made and shall inquire of the organization as to its intent. If no written response is received by the Planning Board from said organization, 15 days thereafter, this requirement is deemed waived.
 - (f) Certification that the applicant has provided the Town Attorney with a metes and bounds description of a proposed drainage district covering the subdivision and has applied to the Town Board for approval thereof.
 - (g) The Town Engineer, Water Superintendent and Highway Superintendent will provide a written report on their final review and recommendations to the Planning Board for each of their respective areas of expertise.
- (5) Stormwater pollution prevention plan:
- (a) A SWPPP, if required for the proposed subdivision under Chapter 120 of this Code; and

§ 123-21 (b) The recommendation of the SMO to approve, approve with modifications, or disapprove the SWPPP pursuant to § 120-4B of this Code. § 123-21

ARTICLE VIII
Clustering

§ 123-22. Procedure and standards.

Whereas, pursuant to a resolution of the Town Board, the Planning Board is empowered to modify applicable provisions of the Zoning Ordinance⁷⁷ in accordance with the provisions of § 281 of the Town Law for the purpose of enabling and encouraging the flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economic use of streets and utilities and to preserve the natural and scenic qualities of open lands, the following shall be the procedure and standards for clustering:

- A. Request by subdivider. A subdivider may request the use of § 281 simultaneously with or subsequent to the presentation of the sketch plans as per procedure described in Article IV. Any submission subsequent to approval of a preliminary plat shall require a reapplication for sketch plat review.
- B. Sketch plan. A subdivider shall present, along with a proposal in accordance with the provisions of § 281 of the Town Law, a standard sketch plan which is consistent with all the criteria established by these Subdivision Regulations, including but not limited to streets and other improvements being consistent with the Town requirements and lots being fully consistent with the Zoning Ordinance.⁷⁸
- C. Lands for park, recreation, open space or other municipal purposes. If the application of this procedure results in a plat sketch showing land available for park, recreation, open space or other municipal purposes directly related to the plan, then conditions as to ownership, use and maintenance of such lands are necessary to assure the preservation of such lands for their intended purposes and shall be set forth upon discussion with the Planning Board.
- D. Plat submission. Upon determination that such sketch plan is suitable for the procedures under § 281 of the Town Law and the subsequent resolution by the Planning Board authorizing the subdivider to proceed a preliminary plat meeting, all of the requirements of the resolution shall be presented to the Planning Board, and thereafter the Planning Board shall proceed with the required public hearings and all other requirements of these regulations.
- E. Filing; notation on Zoning Map. On the filing of a final plat in the office of the County Clerk in which § 281 of the Town Law has been used, the subdivider shall file a copy with the Town Clerk who shall make appropriate notations and reference thereto on the Town Zoning Map.⁷⁹ The Secretary of the Planning Board shall notify the Building Inspector when such a plat is filed.

77. Editor's Note: See Ch. 144, Zoning.

78. Editor's Note: See Ch. 144, Zoning.

79. Editor's Note: The Zoning Map is on file in the Town Clerk's office and may be inspected during regular business hours.

ARTICLE IX
Waivers, Modifications and Review

§ 123-23. Waiver of specific improvements.

The Town Board may waive, by specific resolution, subject to the appropriate conditions and guaranties, for such period as it may determine, the requirements of these regulations relative to the provisions and design of any or all required public improvements which, in its judgment or the special circumstances of a particular plat or plats, are not requisite to the interests of the public health, safety and general welfare of the Town, or are not appropriate because of the inadequacy or lack of connecting facilities adjacent to or in the proximity of the proposed subdivision.

§ 123-24. Modification of specific requirements.

Where the Town Board finds that compliance with these regulations would cause unusual hardship or extraordinary difficulties because of exceptional and unique conditions of topography, access, location, shape, size, drainage or other physical features of the site, the minimum requirements of these regulations may be modified by specific resolution of the Planning Board to mitigate the hardship, provided that the public interest is protected and the development is in keeping with the general spirit and intent of these and other Town regulations.

§ 123-25. Review of Town or Planning Board decisions.

Any officer, department, board or bureau of the Town, with the specific approval of the Town Board, or any person or persons jointly or severally aggrieved by any decision of the Planning Board concerning a plat decision, may bring a proceeding to review such decision in the manner provided by Article 78 of the Civil Practice Law and Rules in a Court of Record on the ground that such decision is illegal in whole or part. Such proceeding must be commenced within 30 days after the filing of the decision in the office of the Town Clerk. Commencement of such proceeding shall stay all further proceedings upon the decision appealed from.

ARTICLE X
Signing of Plats

§ 123-26. Authorization.

The appropriate officers authorized to sign approved subdivision plats under the Town Law are the Chairman and the Clerk of the Planning Board or, in their absence, the Acting Chairman and the Acting Clerk. In addition, the Town Supervisor and Town Clerk are authorized cosigners under the Real Property Law.

ARTICLE XI
Plat Modifications

§ 123-27. Changes to require resubmission of plat.

No changes, erasures, modifications or revisions shall be made in any subdivision plat after approval has been given by the Planning Board and endorsed in writing on the plat, unless said plat is first resubmitted to the Planning Board and such Board approves, in writing, any such modifications. In the event that any subdivision plat is recorded without complying with these requirements, the same shall be considered null and void, and the Planning Board shall institute proceedings to have the plat stricken from the records of the County Clerk.

ARTICLE XII
Conflicts With Other Laws

§ 123-28. Conflicts with other laws.

Should these regulations conflict with or otherwise be inconsistent with any provision of any regulation of the Town of Elma, the more stringent provisions shall apply.

ARTICLE XIII
Severability

§ 123-29. Severability.

Should any section or provision of these requirements contained herein or as amended, or the application thereof to any person or circumstance hereinafter, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of these regulations as a whole or any part thereof, other than the part so declared to be invalid. The Planning Board hereby declares that it would have enacted these regulations or the remainder thereof, and the Town Board declares that it would have approved the same, even if the invalidity of such section or provisions or its application had been apparent.

Chapter 127

TAXATION

§ 123-29

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

§ 123-29

GENERAL REFERENCES

Assessments — See Ch. 3.

Conservation easements — See Ch. 70.

Conservation Board — See Ch. 7.

ARTICLE I
Senior Citizens Tax Exemption
[Adopted 3-1-1967 by Ord. No. 9]

§ 127-1. Grant of partial exemption.

The Town of Elma, pursuant to the authority contained in Chapter 616 of the Laws of 1966, as set forth in § 467 of the Real Property Tax Laws, hereby grants a partial tax exemption on real property within the Town of Elma.⁸⁰

§ 127-2. Terms and conditions for qualification.

Such partial tax exemption shall be given only to the owners of real property referred to in § 467 of the Real Property Tax Law and upon the terms and conditions and in the manner set forth in said § 467, as now enacted or hereafter amended.

80. Editor's Note: The maximum income allowable under this exemption is set by resolution of the Town Board and is on file in the office of the Town Clerk.

§ 127-3

§ 127-3

ARTICLE II
Business Investment Tax Exemption
[Adopted 4-6-1977 by L.L. No. 1-1977]

§ 127-3. Repeal of exemption.

Pursuant to the authority of Subdivision 7 of § 485-b of the Real Property Tax Law, the partial exemption from taxation, special ad valorem levies and service charges provided by such § 485-b is hereby repealed insofar as such exemption would have been applicable to real property assessed for Town purposes.

ARTICLE III
Veterans Tax Exemption
[Adopted 10-16-1985 by L.L. No. 4-1985]

§ 127-4. Adjustment due to full value assessment.

- A. If the ratio between the exemption granted under § 458 of the Real Property Tax Law and the total assessed value of the real property for which such exemption has been granted increases or decreases due only to a full value assessment in the tax district in which such property is located, the amount of the exemption heretofore or hereafter granted shall be increased or decreased in such subsequent year in the same proportion as the total assessed value has been increased or decreased. Such adjustment shall be made by the Assessors in the manner provided in Subdivision 1(3) of § 458 of the Real Property Tax Law, and no application therefor need be filed by or on behalf of any owner of any eligible property.
- B. The ratio established and provided for in Subsection A above shall become effective only in the event of full value assessment on real property in the Town of Elma, whether such full value assessment is authorized by the Town of Elma, the County of Erie or the State of New York or any agency thereof.

ARTICLE IV
Condominium Conversion Taxation Assessment
[Adopted 9-21-2005 by L.L. No. 1-2005]

§ 127-5. Title.

This article shall be known as the "Town of Elma Converted Condominium Taxation Assessment Exclusion Local Law No. 2005-1."

§ 127-6. Purpose.

The purpose of this article is to exclude converted condominium units from assessment under Real Property Law § 339-y.

§ 127-7. Statutory authority; applicability.

- A. This article is subject and subordinate to all the conditions and provisions contained in Article 9-B of the Real Property Tax Law, § 581, Subdivision 1, and amendments thereto, and any and all rules and regulations and opinions adopted or to be adopted by the State of New York.
- B. This article shall apply to real property situate within the bounds of the Town of Elma.

§ 127-8. Definitions.

The words and terms used in this article shall have the same meaning as in Article 9-B of the Real Property Law and Article 5 of the Real Property Tax Law.

§ 127-9

§ 127-11

ARTICLE V

Cold War Veterans Tax Exemption**[Adopted 3-19-2008 by L.L. No. 3-2008; amended in its entirety 2-14-2018 by L.L. No. 1-2018]****§ 127-9. Legislative intent.**

This article amends a prior local law known as "Adoption of Certain Benefits under Section 458-b of the Real Property Tax Law" adopted by the Town of Elma on March 19, 2008.

§ 127-10. Purpose; title.

Section 127-4 is amended by adopting this Article V and the enumerated sections. The purpose of this article is to provide a veterans exemption of real property taxation allowable pursuant to § 458-b of the Real Property Tax Law of the State of New York and shall be known as "Cold War Veterans Exemption Local Law without regard to ten-year limitation."

§ 127-11. Grant of exemption.

This § 127-11 is added to provide for the following in accordance with Real Property Tax Law § 458-b.

- A. Qualifying residential real property shall be exempt from taxation to the extent of 15% of the assessed value of such property; provided, however, that such exemption shall not exceed \$18,000 or the product of \$18,000 multiplied by the latest state equalization rate for the Town of Elma, New York.
- B. In addition to the exemption provided by Subsection A, where the Cold War Veteran received a compensation rating from the United States Veterans Affairs or from the United States Department of Defense because of service-connected disability, qualifying residential property shall be exempt from taxation to the extent of the product of the assessed valuation of property, multiplied by 50% of the Cold War veteran disability rating; provided, however, that such exemption shall not exceed \$60,000 or the product of \$60,000 multiplied by the latest equalization rate for the Town of Elma, New York.
- C. The exemption provided by Subsection A shall be granted pursuant to Subdivision 2(c)(iii) of § 458-b of New York State Real Property Tax Law; the exemption authorized shall apply to qualifying owners of qualifying real property for as long as they remain qualifying owners, without regard to such ten-year limitation.

ARTICLE VI
Conservation Easement Agreement Exemption
[Adopted 8-17-2011 by L.L. No. 1-2011]

§ 127-12. Definitions.

The following terms shall have the following meanings:

NATURAL RESOURCES — Includes but not limited to agricultural lands defined as open lands actually used in bona fide agricultural production.

OPEN SPACE or OPEN AREA — Any space or area characterized by natural scenic beauty whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development or would maintain or enhance conservation of natural or scenic resources.

§ 127-13. Procedure.

- A. Any owner of land may submit a proposal to the Town Board of the Town of Elma for the granting of interest or rights in real property for the preservation of open space or area. Such proposal shall be submitted in such a manner and form as may be prescribed by the Conservation Board of the Town of Elma.
- B. Upon receipt of such proposal, the Town Board shall convey the proposal to the Conservation Board of the Town of Elma. The Conservation Board shall investigate the area to determine if the proposal would be of benefit to the people of the Town and may negotiate the terms and conditions of the offer. If the Conservation Board determines that it is in the public interest to accept such proposal, it shall recommend to the Town Board that it hold a public hearing for the purpose of determining whether or not the Town should accept such proposal.
- C. The Town Board shall, within 30 days of receipt of such advisory opinion, hold a public hearing concerning such proposal at a place within the Town. At least 10 days' notice of the time and place of the hearing must be published in a paper of general circulation in the Town, and a written notice of such proposal shall be given to all adjacent property owners and to any municipality whose boundaries are within 500 feet of the boundaries of said proposed area, and to the school district in which it is located.
- D. The Town Board after receiving the reports of the Conservation Board, and after such public hearing, may adopt the proposal or any modification thereof it deems appropriate or it may reject it in its entirety.
- E. If such proposal is adopted by the Town Board, it shall be executed by the owner or owners in written form and in a form suitable for recording in the Erie County Clerk's office.
- F. Such agreement may not be canceled by either party. However, the owner or owners thereof may petition the Town Board for cancellation upon good cause shown, and such cancellation be granted only upon payment of the penalties provided in this article.

§ 127-14. Granting of exemption.

- A. An exemption granted pursuant to this section shall commence on the effective date of the conservation easement agreement, and shall terminate upon the expiration or termination of such conservation easement agreement.
- B. Computation of exemption.
 - (1) The following table shall illustrate computation of the exemption:

§ 127-14

§ 127-16

Commitment	Percentage of Exemption
15 to 29 years	50%
30 to 49 years	75%
50 to 75 years	85%
Perpetual	90%

(2) Such exemption shall be granted only upon application by the owner or owners of such real property on a form prescribed by the Commissioner. Such application shall be filed with the Assessor of the Town on or before the taxable status date of such Town.

- C. If satisfied that the applicant is entitled to an exemption pursuant to this section, the Assessor shall approve the application and such real property shall thereafter be exempt from taxation and special ad valorem levies as provided in this section commencing with the assessment roll prepared on the basis of the taxable status date. The assessed value of any exemption granted pursuant to this section shall be entered by the Assessor on the assessment roll with the taxable property, with the amount of the exemption shown in a separate column.
- D. Whenever a conservation easement encumbers only a portion of a parcel, the Assessor shall henceforth enter that portion of the parcel encumbered by such easement as a separate parcel on all subsequent assessment rolls.

§ 127-15. Penalties for offenses.

If there is a violation of the terms and conditions of the conservation easement agreement or if such conservation easement agreement is canceled by the Town Board upon petition, then the owner or owners of such property must pay to the Town the following amounts:

- A. All taxes abated pursuant to the conservation easement agreement, as limited by the remainder of this section, including, if applicable, those taxes imposed by the county, Town, school districts and special improvement districts and all other taxing units to which the property is subject. Repayment of the aforementioned abated taxes shall be equal to five times the taxes saved in the last year in which the land benefited from a conservation easement agreement exemption, plus interest of 6% per year compounded annually for each year in which an exemption was granted, not exceeding five years.
- B. Payments shall be added by or on behalf of each taxing jurisdiction to the taxes levied on the assessment roll prepared on the basis of the first taxable status date after there is a violation of the terms and conditions of the conservation easement or such conservation easement is cancelled.

§ 127-16. Provisions on conservation easements.

Chapter 70 of the Code of the Town of Elma, State of New York, entitled "Easements, Conservation," is also included in § 70-1 through § 70-9 inclusive.

Chapter 130

TOWERS, CONSTRUCTION OF

§ 127-16

[HISTORY: Adopted by the Town Board of the Town of Elma 1-18-1984. Amendments noted where applicable.]

§ 127-16

GENERAL REFERENCES

Building construction — See Ch. 52.

Site plan review — See Ch. 117.

Flood damage prevention — See Ch. 82.

Zoning — See Ch. 144.

§ 130-1. Construction of towers permitted.

Communication installations, wind energy conservation systems and towers may be permitted in any zoning district in the Town of Elma except the floodplain area, subject to use permit approval by the Elma Town Board.

§ 130-1

§ 130-2

§ 130-2. Purpose.

It is the purpose of this chapter to regulate the installation of towers within the Town of Elma, New York, to require that such towers be located and constructed in accordance with approved plans and to prescribe regulations for said towers in the interest of protecting the public health and safety.

§ 130-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AMBIENT NOISE — The all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources.

ATTACHED TOWER — Includes a tower which is rigidly attached to a building by a rigid member.

CONTINUOUS SOUND — Any sound that is not an impulsive sound.

DISCRETE TONE — Any sound wave whose instantaneous sound pressure varies essentially as a simple sinusoidal function.

FREESTANDING TOWER — Includes a tower which is not attached to a building by a rigid member.

PREEXISTING TOWER — Any tower existing at the time of the adoption of this chapter.

SOUND LEVEL — A frequency-weighted sound-pressure level, obtained by the use of metering characteristics and the weighting A, B or C as specified in the American National Standards Institute Specification for Sound Level Meters, SL 4-1971 or latest revision. The sound-level meter shall conform to either Type 1 or Type 2. The weighting employed must always be stated.

SOUND-PRESSURE LEVEL —

- A. In decibels, of a sound is 20 times the logarithm to the base 10 of the ratio of the pressure of this sound to the reference pressure of 20 micronewtons per square meter.
- B. In formula.

$$\text{SPL} = 20 \log_{10}(P/P_o)$$

WHERE:

- SPL = The sound-pressure level.
- P = The effective (root means square) sound pressure.
- P_o = The reference pressure.

TOWER — Includes any tower, edifice, pole or other structure, whether attached to a building or freestanding and whether guyed or self-supporting, designed to be used as or for the support of devices to be used for the transmission and/or reception of radio frequency signals, such as but not limited to broadcast, shortwave, citizens' band, FM or television signals or wind-driven devices, such as energy converters and wind-speed and/or direction indicators.

§ 130-3

§ 130-4

§ 130-4. Use permit required; exceptions.

- A. No person, firm or corporation being the owner or occupant of any land or premises within the Town of Elma shall use or permit the use of said land or premises for the construction of a tower without obtaining a use permit, approved by the Town Board after investigation and recommendation of the Planning Board. The Building Inspector shall issue the permit.
- B. Specific exemptions from this chapter are:
 - (1) Preexisting towers.
 - (2) Antennas used for residential household television and radio reception.
 - (3) Public utility poles used for power transmission, telephone and cable television service along rights-of-way and towers used for high-voltage power transmission lines by public utilities.

§ 130-4

§ 130-5

§ 130-5. Preexisting towers.

Preexisting towers are exempt from this chapter, unless they are required to be or voluntarily are substantially rebuilt (greater than 50%). "Substantially rebuilt" shall not include lowering of certain towers for maintenance, painting or adjustment.

§ 130-5

§ 130-6

§ 130-6. Application for permit.

- A. The application for a tower use permit under this chapter shall be in writing and signed by the applicant. It shall state the following:
 - (1) The name and address of the applicant.
 - (2) The name and address of each partner if the applicant is a partnership.
 - (3) The name and address of each officer if the applicant is a corporation.
- B. A site plan shall be made and shall include the submission of a certification by a registered professional engineer or manufacturer's certification that the tower was designed to withstand all load requirements for structures as set forth in the New York State Building Construction Code, the National Electrical Code and the Electronics Industries Association Standard RS - 222C Specification.
- C. Where the applicant is not the owner of the premises, the application shall also be accompanied by the original or a true and complete copy of the lease of the premises and a written statement signed by all the owners of record consenting to the construction of the tower on the premises.

§ 130-6

§ 130-7

§ 130-7. Rules and regulations for maintenance.

Permits issued may prescribe rules and regulations for the maintenance and safety of such towers.

§ 130-8. Location of towers; noise restrictions.

Freestanding towers shall be located or placed in rear yards and limited to not more than one tower per acre. Guy wires and anchors for towers shall not be located closer to any property line or building than 10 feet. In addition, towers shall conform to requirements as listed below:

- A. Towers shall be so placed that the foundation portion of the tower, if visible from any right-of-way, shall be suitably screened from view.
- B. Towers which will be used for energy-deriving purposes shall not produce a level of noise at any lot line greater than the ambient nighttime level. No person shall operate or permit to be operated a wind generator or wind-driven device that exceeds the maximum sound level limitations provided in this chapter. Continuous sound in air which has crossed a real property boundary shall not exceed any of the following sound levels:
 - (1) The device cannot increase the ambient sound level by more than three dBA, when measured at three feet from the nearest living area window opening.
 - (2) Sounds that have high concentration of energy in narrow frequency bands (pitched or tone-like sounds) are usually regarded as more annoying than wide-band sounds of the same level. Therefore, if the device does generate a discrete tone, the operating sound-pressure level cannot exceed the ambient level, when measured at three feet from the nearest living area window opening.
- C. The base of a freestanding tower may be no closer to any lot line or public utility line than a distance equal to the height of the tower plus 10 feet, except that a residential communication tower for use of a resident occupant only and not exceeding 50 feet is exempt from this requirement, provided that its height shall not exceed the linear distance to the nearest non-owner-occupied dwelling or non-owner-occupied utility service line.
- D. The base of a freestanding tower used for a windmill device or system shall be surrounded by a fence at least six feet in height or similarly protected for the purpose of discouraging illegal trespassing or vandalism.
- E. It shall be the responsibility of the owner of the tower to take whatever corrective measures may be required to correct TV (television) interference caused by and attributable to a windmill device or system.

§ 130-8

§ 130-9

§ 130-9. Height limitations.

The following height limitations shall apply to the construction of any tower:

- A. Attached towers in residential areas which are attached to the roof of the structure shall not exceed 30 feet above the grade or 15 feet in height above the ridge, the total not to exceed 30 feet in height.
- B. Towers as defined heretofore, in all areas, shall not exceed a total height of 200 feet above the ground.

§ 130-9

§ 130-10

§ 130-10. Towers permitted in certain areas only.

Notwithstanding any other provision of this chapter or of any other provision of the Elma Code, nonresidential towers and commercial towers of all types may be located only in a commercial or industrial zone.

§ 130-10

§ 130-11

§ 130-11. Severability.

If any clause, sentence, paragraph, section, Article or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, Article or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Chapter 134

VEHICLES AND TRAFFIC

§ 130-11

**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories.
Amendments noted where applicable.]**

§ 130-11

GENERAL REFERENCES

Mobile home parks — See Ch. 97.

Zoning — See Ch. 144.

Streets and sidewalks — See Ch. 121.

ARTICLE I
Parking
[Adopted 9-6-1972 by Ord. No. 13]

§ 134-1. Statutory authority.

This article is enacted pursuant to the power and authority now contained in § 130, Subdivision 7, of the Town Law and § 1660, Subdivisions (a)8 and 18, of the Vehicle and Traffic Law.

§ 134-2. Definitions.

For purposes of this article, the meaning of the words "park" or "parking" and "stand" or "standing" are those meanings set forth in the Vehicle and Traffic Law.

§ 134-3. No parking on certain streets.

No motor or other vehicle of any kind shall be allowed or permitted to stand or park on the following public highways in the Town of Elma:

Street	Side	Location
Blossom Road	Both	From Clinton Street southwesterly to St. Paul's Church, for a distance of 2,000 feet, more or less
Blossom Road	Both	From Seneca Creek Road, also known as Main Street in the Hamlet of Blossom, to a point immediately south of the fire hall of the Blossom Volunteer Fire Company, Inc., for a distance of 900 feet, more or less
Bowen Road [Added 7-20-1983]	East	From a point 100 feet north of the north line of the northernmost entrance to the Elma United Methodist Church to a point 100 feet south of the south line of the drive immediately south of the Elma United Methodist Church building
Bowen Road [Added 6-16-1976 by Ord. No. 16]	East	From the north line of Rice Road to a point 1,000 feet northerly thereof
Girdle Road [Added 9-3-2008]	Both	From the Iroquois Central School Campus to Caroline Lane
Northrup Road [Added 7-7-1976 by Ord. No. 17]	Both	From a point 300 feet southerly from the south end of the bridge over Cazenovia Creek to a point 932 feet northerly thereof
Old Bullis Road ⁸¹ [Added 10-15-1986 by L.L. No. 7-1986]	Both	Entire right-of-way from the westerly intersection of Old Bullis Road with New Bullis Road, to the easterly intersection of Old Bullis Road with New Bullis Road
Seneca Creek Road, also known as Main Street in the Hamlet of Blossom	Both	From Clinton Street southwesterly to St. Paul's Church for a distance of 2,000 feet, more or less
Seneca Street [Added 2-18-1976 by Ord. No. 15]	Both	From the Aurora Town line to the center line of Billington Road

81. Editor's Note: Old Bullis Road is described as the southerly portion of Bullis Road which crosses Big Buffalo Creek over the old concrete bridge spanning said creek.

§ 134-3

§ 134-7

Street	Side	Location
Schultz Road [Added 6-17-1981]	Both	From Jamison Road to a point 1,000 feet northerly thereof
South Schultz Road [Added 6-17-1981]	Both	From Jamison Road southerly to the end of South Schultz Road

§ 134-4. Trailers and vans. [Added 6-3-1981]

It shall be unlawful, within the limits of the Town of Elma, for any person to park any trailer or van of any kind on any street, alley, highway or other public place between the hours of 9:00 p.m. and 6:00 a.m. Temporary stops may be permitted between these hours, provided that such vehicle is parked off the paved or main driving portion of the highway. No trailer or van parked in this manner shall be used or occupied by any person while so parked.⁸²

§ 134-5. Penalties for offenses.

A violation of this article is hereby declared to be a traffic violation, and any person violating the same may, upon conviction, be punished by a fine not exceeding \$25 and by imprisonment not exceeding 10 days, or by both such fine and imprisonment.

§ 134-6. Removal and storage of vehicles left unattended.

Any vehicle found unattended on a public highway in the Town of Elma, where it constitutes an obstruction to traffic or where parking or standing is prohibited, may be removed and stored at the request and direction of a police officer having authority to act as such in the Town of Elma, and the reasonable cost of such removal and storage shall be paid by the owner or operator of such vehicle.

§ 134-7. Overnight parking. [Added 3-7-1984]

No motor vehicle or other vehicle shall be allowed or permitted to park or shall be parked on the pavement of any and all roads, other than state roads and streets,⁸³ in the Town of Elma during and between the hours of 2:00 a.m. and 8:00 a.m., from the 15th day of November of each year through the first day of April of each year.

82. Editor's Note: For additional regulations pertaining to the use of trailers, see Ch. 97, Mobile Home Parks, and Ch. 144, Zoning.

83. Editor's Note: By resolution adopted 5-16-1984, state highways were included in this section.

§ 134-8

§ 134-9

ARTICLE II
Vehicle Weight Limits on Town Roads
[Adopted 2-13-2008 by L.L. No. 2-2008]

§ 134-8. Designation of weight limits.

Weight limits are hereby established in the amounts and upon the following roads located within the Town of Elma, and said weight limits shall be posted accordingly, allowing for local delivery:

Street	Weight Limit (tons)
Billington Road	5
Chairfactory Road	5
Handy Road	5
Kinsley Road	5
Northrup Road	5
North Star Road	5
Woodard Road	5

§ 134-9. Penalties for offenses.

Any person, firm or corporation who or which violates the provisions of this article shall be subject to a fine of not less than \$100 for the first offense and not more than \$500 for each subsequent offense.

Chapter 140

WATER

§ 134-9

[HISTORY: Adopted by the Town Board of the Town of Elma 8-5-1964 by Ord. No. 8; amended in its entirety 12-19-2018. Subsequent amendments noted where applicable.]

§ 134-9

GENERAL REFERENCES

Building construction — See Ch. 52.

Sewers — See Ch. 115.

Cross-connection control — See Ch. 59B.

Subdivision of land — See Ch. 123.

Excavations — See Ch. 75.

Zoning — See Ch. 144.

ARTICLE I
General Provisions

§ 140-1. Purpose.

The purpose of this chapter is to promote the general health, welfare and safety of the inhabitants of Elma, through regulations, supervision and control of the water system and supply of the Elma Water District. It is hereby declared the policy of the Town Board of Elma by means of this chapter to provide such regulation, supervision and control and to provide for the operation and maintenance of the Elma Water District.

§ 140-2. Definitions.

In interpreting and applying the provisions of this chapter, the following definitions shall prevail:

BUILDING — Includes any structure of enclosure to which water is supplied, whether occupied or vacant.

PREMISES — Includes all places to which water is supplied, whether occupied or vacant.

WATER DEPARTMENT — The person, group or department of the Town, appointed or created by the Elma Town Board, having charge of the furnishing of water either within or without the water district.

§ 140-3. Conformance to provisions required.

- A. No person, building or premises shall apply for or receive water from the Elma Water District, except in accordance with the provisions of this chapter. The provisions of this chapter and any rules and regulations adopted hereunder shall be deemed a part of any contract for the furnishing of water, and any person applying for, receiving, accepting or paying for water service from the Elma Water District and/or the Water Department shall be considered, as part of the consideration for receiving such service, as having agreed to be bound by said provisions and rules and regulations.
- B. Any person who knowingly receives or knowingly permits premises owned or occupied by him to receive water from the Elma Water District except in accordance with this chapter or said rules and regulations shall be guilty of a violation of this chapter, punishable as provided hereinafter.

ARTICLE II
Permits

§ 140-4. Application.

Any person desiring to purchase or receive water from or to connect into the Elma Water District or any of its mains or water transmission lines, or for replacement and modification of an existing installation, shall apply to the Water Department, upon forms provided by the Water Department. Applications shall be made by the owner of premises or his agent authorized in writing.

§ 140-4.1. Water service; permit requirements.

Water service shall not be provided for any building or structure in the Town of Elma unless there is in effect for said building or structure a building permit or an existing certificate of occupancy issued by the Elma Building Department.

§ 140-5. Fees payable prior to issuance.

No permit shall be granted for the installation, replacement or modification of water supply for the Elma Water District until the fees for tapping mains, connections for service, advance rentals or deposits and any other authorized charges have been paid.

§ 140-6. Access to premises.

For the purposes of inspection, installation, maintenance, repair, meter reading, turning on or shutting off water, authorized personnel of the Water Department shall have free and full access, at all reasonable times, to all parts of any premises supplied with water from the Elma Water District or upon which application has been made to the Water Department or to which water is reasonably believed to be supplied. Filing of an application shall, in addition to the provisions of this section, be deemed consent to such access.

ARTICLE III
Private Service Lines

§ 140-7. Installation and maintenance to conform to requirements.

The installation and maintenance of private service lines, excluding the mains and lines of the Elma Water District, shall be in accordance with the following provisions and specifications.

§ 140-8. Inspections; fee.

No private service line from a water district pipe or main shall be installed, altered, replaced or used until the same has been inspected and approved by the Water Department. A fee of \$90 shall be paid to the Water Department upon filing an application for each inspection.

§ 140-9. Street openings.

No opening shall be made in any Town highway, except with the consent and approval of the Town Superintendent of Highways, upon such terms and conditions as he shall require, including the posting of a reasonable bond if, on his reasonable judgment, such bond is necessary. For this purpose, the Superintendent may prepare reasonable requirements for such openings to be filed with the Water Department.

§ 140-10. Taps and connections.

All connections to or taps of water mains for water service shall be made by or under the supervision of the Water Department. A receipt for tapping fees shall be on file with the Water Department in advance of making such connection or tap.

§ 140-11. Line specifications.

- A. All private lines up to the meter shall be installed, maintained, altered or replaced with Type K copper tubing which shall conform to ASTM Designation 888, latest revision, of the following widths and thickness:

Width (inches)	Thickness (inches)
3/4	0.065
1	0.065
1 1/4	0.065
1 1/2	0.072
2	0.083

- B. All joints in Type K copper tube service lines between the curb stop and meter shall be made with compression fittings.

§ 140-12. Trenches.

- A. The service line shall be laid out not less than four feet below the established grade of the adjacent street or existing ground level; but where it is impractical to meet the Department requirement by reason of existing conditions, the Water Department may, upon application therefor, grant a permit for some other method of installation.
- B. All service lines shall be laid in a separate trench at least three feet distant horizontally from any other

§ 140-12 underground facility and in solid ground. The placing of water service line in the same trench as that occupied by sewer pipe, gas pipe or other utility lateral connections will not be permitted except by special authorization of the Water Department in extraordinary cases, including where solid rock is encountered. § 140-17

§ 140-13. Tapping point.

The Water Department shall designate the point at which the water main is to be tapped and also the position of the service pipe connection at the tap. The Water Department shall make necessary excavations for all taps, which shall be at least four feet square and not less than six inches below the main.

§ 140-14. Replacement of taps.

No new tap shall be made to a water main to connect with a service line which is intended to replace an existing service line unless the existing service line is properly disconnected at its tap to the water main. The expense of such disconnection shall be borne by the applicant.

§ 140-15. Abandoned taps.

Where a service line is abandoned, the service line must be shut off at the tap and disconnected at the expense of the owner.

§ 140-16. Multiple users.

There shall be a separate and distinct tap for the service of each premises supplied with water. Multiple taps to any one premises may be installed upon application of the owner, at the discretion of the Water Department. Each meter must have a distinct service line and its own distinct curb stop.

§ 140-17. Maintenance.

All outside service lines, building service pipes, outlets and fixtures shall be maintained in good order and repair and protected from frost, leaks and breaks and must be promptly repaired if not in good order to prevent waste of water. If the owner fails to observe these requirements, the Water Department may shut off the water supply and assess the cost thereof against the real property affected, to be collected as part of the water rent.

ARTICLE IV
Tapping Charges

§ 140-18. Fee.

Any person who desires to receive water from the Elma Water District shall, in connection with his application, pay a charge, as established from time to time by resolution of the Town Board, for the tapping of water mains, unless a tap to the main was installed at the time of original construction.

§ 140-19. Service for separate buildings.

If service is desired for two separate buildings, the charge shall be the same as for two separate tapplings, in accordance with the charges established pursuant to § 140-18.

§ 140-19.1. Service for duplex buildings.

In the case of a duplex, the owner has a choice to either apply for two complete separate applications, pay for standard tapping fees, inspection fees and meter deposit fees or apply for two complete separate applications, pay for one-inch tap and two three-quarter-inch meter deposits, add a T fee of \$150 (must be two feet apart) and two inspections. Determination can be made by the owner at the time of application.

§ 140-20. Variances in size or type.

The Superintendent may authorize a different size or type of tap, in extraordinary cases, giving due regard for proper standards for the preservation of pressures and flow.

§ 140-21. Change in charges.

The Town Board, at its regular meeting, may increase or decrease the above tapping charges by not more than 10% at any one meeting.

ARTICLE V
Water Meters

§ 140-22. Supply and installation.

All meters used to measure water purchased from the water district shall be supplied by the water district, and no meter shall be installed unless supplied by the water district. Each meter shall be installed by the Water Department after payment of the fee specified hereinafter.

§ 140-23. Deposits.

At the time of application for water service, the following must be paid in full; tapping fee, inspection fee, meter deposit for each meter up to one inch in size; the amount of meter deposit is to be fixed by resolution of the Town Board from time to time. For meters over one inch in size, the deposit is based on the actual cost of the meter at time of purchase. A quote will be obtained by the Water Department and the applicant will be advised of the cost.

§ 140-24. Installation and maintenance.

- A. The Water Department will install and maintain meters and meter couplings. Meters shall be set as nearly as possible to the point of entry of the service connection pipe to the building and shall be kept unobstructed and easily accessible to Water Department employees at all times. The Water Department in its rules and regulations may require a meter to be set in a pit or box other than the customary location of the meter, which pit or box is to be provided by and at the expense of the consumer and located near the front property line of the premises. The installation must meet the current adopted specifications for that type meter installation.
- B. The Water Department will at regular intervals determine a meter's accuracy and will replace the meter or its defective parts in improperly operating meters, at its expense, in meters up to two inches in size, except where meters are damaged by frost, hot water or from external causes. The meter shall, after installation, be sealed by the Water Department which shall thereafter have complete control of thereof. No sealed meter may be removed without a written permit from the Water Department.
- C. Permanent meter installation requires a two-inch or larger-size bypass around the meter and a valved spur pipe on the building side of the meter for test purposes. The design of such special meter settings shall be submitted to the Water Department for approval before construction by the consumer is undertaken. The Water Department will test meters at regular intervals to determine their accuracy and will replace defective parts in improperly operating meters at the customer's expense. The meter shall, after installation, be sealed by the Water Department, which shall thereafter have complete control thereof. No sealed meter may be removed without a written permit from the Water Department.

§ 140-25. Tampering with equipment.

No person other than an employee of the Water Department shall interfere with or remove any water meter, sealing device or coupling from any meter installation after it has once been placed in service by the Water Department.

§ 140-26. Size.

The Water Department shall determine the proper size of meter to be installed and shall have the right to change the meter at any time it is necessary in order to ensure its proper operation.

§ 140-27. Damage to equipment; cost of repairs.

Any meter damaged by frost or by hot water or steam backing into the meter or by an external cause shall be repaired by the Water Department at the expense of the property owner, and the water service may be disconnected until such corrective action is taken to prevent a recurrence of the incident which caused the damage. The charge

§ 140-27

for such repairs shall be fixed from time to time by resolution of the Town Board.

§ 140-29.1

§ 140-27.1. Relating to meter damage and cost of repairs.

The charge for such repairs shall be based on the cost of removing, repairing, testing and replacing said meter, plus 15% for department overhead. There shall be a minimum charge of \$25 for a three-quarter-inch meter, \$35 for a one-inch meter and \$50 for a meter larger than one inch.

§ 140-28. Test for accuracy.

Consumers, upon request, may have the meters serving their premises tested by the Water Department in their presence or that of a duly authorized representative. If the meter so tested shall be found to register not more than 103% of the amount of water actually passing through it, a charge in the amount of \$15 shall be paid by the consumer for testing a meter one inch or less in size, and, for meters larger than one inch in size, the actual expense, including overhead, incurred by the Water Department in removing, testing and replacing the meter shall be paid by the consumer.

§ 140-29. Meter reading and maintenance.

Employees of the Water Department, in the performance of their duties, shall be permitted to enter the premises of any consumer at any reasonable hour to remove, replace, repair or test the meter, to make a record of the quantity of water used, to inspect the premises to determine the manner of water use or to enforce the provisions of this Water Chapter. If the Water Department is unable to read a meter after two successive attempts, the charge will be estimated on the basis of prior use in comparable periods and the difference adjusted when the meter is again read. If the meter is damaged or fails to operate, the bill will be based on the average use during prior comparable periods unless there is evidence that the use is not normal and the average use for comparable periods is not properly applicable, in which case the charge will be estimated by some other method which the Water Department considers equitable.

§ 140-29.1. Meter reading card.

In all instances, except for industries and meter pits, the consumer will be mailed a meter reading card, with postage prepaid, with a request that the consumer fill in, in the space provided, the consumption figures on the water meter. The meter reading card should be filled in and returned by the 16th of the month of receipt. If the meter reading card is not so received, the bill will be estimated using previous readings on the consumer's account ledger. For the third estimate, covering nine months' water usage, the meter will be read and an additional service charge of \$25 will be added. For the fourth estimate, covering one years' service, a notice of shutoff of \$90 will be mailed with the meter reading card, and an additional service charge of \$25 will be added for the sending of said personnel.

ARTICLE VI
Water Rates

§ 140-30. Establishment.

The schedule of charges and rates for water service shall be as adopted annually or at any other time as determined by resolution of the Town Board, except that, if no action is taken by the Board, the most recently adopted schedules shall continue in effect.

§ 140-31. Basis for charges.

All water supplied shall be charged for on the basis of the amount registered on the meter or meters installed on the consumer's premises with a minimum charge as established by the Town Board. Where two or more meters supply the same premises and the consumer, the consumer, in addition to the fixed charges for all meters, shall be billed at the schedule of rates for a quantity of water equal to the sum of the readings on all meters on the premises.

§ 140-32. Water used for construction purposes.

A charge shall be made for construction purposes during the erection of any dwelling or business establishments. This is only available until the building is secure. This charge shall be fixed by the Town Board when it adopts the schedule of charges and rates herein provided for. For all other types of construction, water shall be metered. A \$40 turn-on/off fee is required, plus the current minimum charge for the first quarter, a current minimum charge for any fractional part of a quarter thereafter. Note: The Water Department is not liable for frozen meters or services. This is the sole responsibility of the owner and/or contractor.

§ 140-33. Special cases.

The Water Department, with the approval of the Town Board, shall determine the charges and rates in special cases to cover unusual conditions or types of service not contemplated in these rules and regulations or in the rates and charges set by the Town Board for regular service. No consumer will be allowed to supply water to other persons or premises, and no owner or occupant shall use water from another premises unless specific permission has been obtained in each case from the Water Department. The Water Department has the right to require, during a temporary period of emergency, that a consumer allow it to connect an adjacent premises to such consumer's piping, but in such case allowance will be made for any excess water registered on his meter.

§ 140-34. Billing procedure.

- A. Checks for payments of water bills and water charges shall be made payable to the Town Water Department. Meters will be read and bills rendered at regular quarterly intervals for all meters up to one inch in size. Bills for the previous quarter shall be due and payable at the office designated on the bill.
- B. If the quarterly bill remains unpaid for a period of 180 days after it becomes due, the water will be shut off until such bill is paid, together with any additional charge as fixed from time to time by resolution of the Town Board, which shall fix a charge both for restoration during normal hours and nonpayment.
- C. If a monthly bill remains unpaid for a period of 90 days after it becomes due, the water will be shut off as stated in Subsection B above.

§ 140-34.1. Restoration of service due to shutoff for nonpayment.

A \$100 service charge, 7:00 a.m. to 3:30 p.m., Monday through Friday, and a \$180 service charge for outside of normal business hours.

§ 140-34.2. Billing adjustment.

§ 140-34.2

§ 140-37

- A. An adjustment will only be given to a premises that had unintentional water loss caused by a broken service line between the meter pit and the house entry. The forgiveness will only be given on the current bill. If prior bills exist, it will not be taken into consideration. See Leak Adjustment Policy, adopted September 5, 2012.⁸⁴
- B. An adjustment will not be given to cover unintentional water loss after the meter inside of the premises, excess water due to left-on hoses, excessive irrigation, water-power sump pumps or neglect of wear-and-tear items such as toilet flappers, leaking faucets, water-softening systems, humidifiers and any water-distributing device attached to the items.

§ 140-35. Responsibility of property owner.

The Water Department, upon the written request of a property owner, will mail the water bills to the tenant or lessee using the water, but the owner shall remain responsible for all charges provided in this article, together with any penalties.

§ 140-35.1. Responsibility of property owner regarding sale of property.

It is the responsibility of the current property owner to contact the Water Department, a minimum of 10 days prior to the close of the house to request a final reading to be completed. Once the reading has been obtained, a final bill will be generated.

§ 140-36. Users outside district.

The Town Board may enter into a contract or contracts for the sale of water to users not within the Elma Water District. Rates for such use shall be specified in each such contract, provided that such rates shall not be less than the rates established for users within the district. In fixing such rates, the Board may consider whether any such applicant is assessed by the Elma Water District as a property owner within said district. Any contract for such service outside the district shall require the party requesting such service to comply with the provisions of this chapter.

§ 140-37. Unpaid charges to constitute lien.

- A. All water rents, penalties and interest thereon and all charges for tapping, connection and disconnecting and any other charges provided by this chapter shall be a lien on the real property upon which the water is used, and such lien shall be prior to every other lien or claim except the lien of an existing tax.
- B. The Town Clerk shall annually file with the Town Board and the Supervisor the amount of any such liens which have not been paid at the time and in the manner prescribed by the Town Board with a description of the real property affected thereby, and the Supervisor and the Board of Assessors may include such amount in the annual tax levy and transmit such statements to the Board of Supervisors, who shall levy the same upon the real property in default.
- C. Notwithstanding any other provision of this article or of the Town Law, the Superintendent of the Elma Water Department may, when a user terminates use of water service and requests refund of a meter deposit, deduct from said deposit any balance due the Water Department for water use. The Superintendent shall first send such user a voucher itemizing the deposit, the water charge and the balance due the user, if any. If the user does not return said voucher within 10 days with his signature affixed, the Superintendent may proceed to offset the meter deposit against the amount due, as above, and remit the balance, if any, to the user.

84. Editor's Note: See Art. IX, Leak Adjustment Policy (Service Line).

ARTICLE VII
General Regulations

§ 140-38. Temporary shutoff of service.

If a consumer desires to discontinue the use of water for a temporary period, the Water Department shall be given at least 24 hours' notice in writing for turning off the water and similar notice for turning it on again. If the temporary discontinuance is during the winter months, the Water Department, upon such request, will shut off the service at the curb cock and remove and place the water meter in its storeroom and will reinstall the same upon proper notice when required, and a charge to be fixed from time to time by resolution of the Town Board will be made to cover the expense incurred rendering this service; A \$40 service charge for storing a meter in our shop and turning water off at the street for a customer taking long-period vacations.

§ 140-39. Permanent shutoff of service.

If a consumer desires to discontinue the use of water due to permanent vacancy, the Water Department shall be given at least 24 hours' notice in writing, accompanied by a fee to be fixed from time to time by resolution of the Town Board, whereupon it will, at the time required, shut off the service and will read and remove the meter for the consumer and will render a special bill for the fractional period; A \$40 service charge for someone who no longer wishes to be a water customer for reasons of going back to their well or demolition of a structure.

§ 140-40. Fire service connections; lawn sprinkler connections.

- A. A service connection for private fire protection purposes may be secured from the Town upon application by the owner of the property involved. A drawing showing the proposed location of all valves, pipes, hydrants, sprinkler heads and other appurtenances to be installed shall be submitted with the application and in accordance with the adopted Town of Elma Cross-Connection Ordinance.⁸⁵
- B. The Water Department will determine the necessity and advisability of installing any fire service connection in view of the size of the street main available, the existence of available fire hydrants and the possible effect on the main pipe system if such a service line were broken and open during a conflagration. Likewise, the Water Department will determine the proper size of each fire connection, which in no case shall be larger than 10 inches in diameter. The cost of installation of such a service, including an approved type of check valve with meter on a bypass located in a pit or vault, if required, shall be borne entirely by the applicant. An annual ready-to-serve charge, based on the size of the service connection and payable in advance, shall be made as follows:
 - (1) Four-inch: \$216.
 - (2) Six-inch: \$396.
 - (3) Eight-inch: \$648.
 - (4) Ten-inch: \$900.
- C. A fire service connection, except as provided in this section, will be subject to the same rules and regulations as apply to regular service connections. No connection shall be made at any time between the fire protection system and the regular water supply on the premises or any other supply, regardless of source, unless specifically approved by the Water Department. A fire service connection is exclusively for fire protection purposes. The use of water from this service for any other purpose whatever is prohibited. Any violation of the provisions shall be sufficient cause for discontinuing such service until reasonable assurance is given that the offense will not be repeated.

85. Editor's Note: See Ch. 59B, Cross-Connection Control.

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D. Service connections to supply lawn sprinkler pipe systems shall conform with the Water Departments Cross-Connection Control Ordinance⁸⁶ as well as any and all New York State and Town health and sanitary codes. These service connections will be permitted only where the use of water for that purpose will not adversely affect regular service to neighboring consumers at periods of peak demand. The size and arrangement of pumps, if any, valves, check valves and other appurtenances shall meet the requirements of the Water Department.

§ 140-41. Cross-connections.

All persons shall comply with the Town Cross-Connection Control Ordinance.⁸⁷ No person owning or occupying premises receiving water service from the Town shall make or allow to be made any connection, either of a direct or of an indirect nature, between his piping system and a water supply from any other source or install or allow to be installed any fixture or appliance or waste or soil pipe from which water may flow, be siphoned or be pumped into any piping connected to the Town water system.

§ 140-42. Responsibility of contractors.

Where either hand excavation or excavating machines are used by contractors or others in digging trenches for sewers, drains, gas mains and conduits, or in connection with any other underground excavation work, all water mains shall be maintained in position at the expense of such persons or contractors. Contractors or others working in the public street must ascertain for themselves the location of all water service connection pipes. Where they are removed, cut or damaged in the construction or repair of a sewer, drain, gas main or conduit or in connection with any other underground excavation work, such person or contractor must, at his expense, cause them to be replaced or repaired in accordance with the requirements of or directly by the Water Department, promptly, and he must at once notify the Water Department of the interruption of service and must reimburse the Department for any expense to it in providing temporary service and in restoring regular service.

§ 140-43. Responsibility for facilities within streets or easements.

The Water Department will operate, maintain and, where necessary, replace all existing mains and appurtenances, fire hydrants and other facilities within the territory of any street or any easement that is under the jurisdiction of the water district, except that repair or damage resulting from collision or any other external cause shall be paid for by the person causing such damage.

§ 140-44. Meddling with Equipment by unauthorized persons prohibited.

No unauthorized person shall open or close any valve, hydrant or curb cock or interfere or meddle with any hydrant, valve, pipe or main curb cock, meter or other fixture or appurtenance connected with the water system of the Town. The Water Department shall control all mains, taps, gate valves, street service connections, curb stopcocks, and gate valves, boxes and meters and may, whenever such facilities are operated or interfered with in any way in violation of these rules and regulations, discontinue the water service to the premises involved, which action shall be in addition to the penalties provided for by this chapter. No person shall, except with a permit from the Water Department, allow contractors, masons or other unauthorized persons to take water from his premises or operate any valve connected with the distribution system.

§ 140-45. Fire hydrants.

A. Fire hydrants are, except under special circumstances and with permission of the Water Department, for the sole use of the various fire companies of the Town furnishing fire protection services. Tampering with any fire hydrant or the unauthorized use of water therefrom is a violation of this article. In cases where no other

86. Editor's Note: See Ch. 59B, Cross-Connection Control.

87. Editor's Note: See Ch. 59B, Cross-Connection Control.

§ 140-45 supply is available, permission may be granted by the Water Department for temporary use of the hydrant. § 140-50

- B. If a property owner or other party desires a change in the location of a fire hydrant, he shall bear all costs of such change. Any change in location of a fire hydrant must be approved and the work done by the Water Department.

§ 140-46. Responsibility for certain types of damage.

- A. The Town and the water district make no guarantee as to the amount or consistency of pressure or volume of the water it furnishes and will not, under any circumstances, be responsible for any loss or damage from any excess, deficiency or variation in the pressure, volume or supply of water or for loss or damage caused by water escaping from or obstructions in a service line, due to frost or any other cause, or for any loss or damage as a result of water escaping from laterals, fixtures, appliances or pipes owned by consumers.
- B. The Water Department shall have the right to shut off the water in the mains temporarily to make repairs, alterations or additions to the plant or system, but the district will not be responsible for damages resulting directly or indirectly from any interruption of the water supply.
- C. When it becomes necessary to shut off the water from any section of the water system, the Water Department will endeavor to give notice to as many of the consumers affected thereby as time will permit and will, so far as practicable, use its best efforts to prevent inconvenience and damage; but failure to give such notice shall not make the Town or district responsible or liable for any damages that may result either directly or indirectly from shutting off the water.

§ 140-47. Safety devices.

In cases where boilers or other appliances in a premises depend upon the pressure in the service line to keep them supplied with water, the owner or occupant shall place suitable safety devices to guard against the impossibility of collapse or explosion when the water supply is interrupted. Likewise, such owner or occupant shall protect water-cooled compressors for refrigeration systems by means of high-pressure safety cutout devices and shall provide means for the prevention of the transmission of water hammer or noise of operation of any valve or appliance through his piping to any adjacent premises. Failure of the owner or occupant to provide such safety devices shall in no way make the Town responsible for any resulting damages.

§ 140-48. Curtailing of water supply; water shortages.

The Water Department shall have the right to curtail the amount of water supplied in the event that its supply becomes limited. The Water Department in case of a shortage of water may limit or prohibit the use of water for sprinkling of lawns or gardens for any purpose not deemed necessary for the maintenance of public health. Where water is wastefully or negligently used on a consumer's premises seriously affecting the general service, the Water Department may discontinue the service of such premises if conditions are not corrected within 24 hours after giving such customer written notice, or, if any emergency exists, it may discontinue service without notice.

§ 140-49. New Roads.

Before any road, on a subdivision or otherwise, shall be accepted by the Town Board as a Town highway, the person offering such road to the Town shall install in or along such road water pipes or mains sufficient to provide water service for any and all dwellings or structures proposed to be erected along such road. In lieu thereof, and in addition to any other deposit or security required for acceptance of such road, the Town Board may require a deposit or security for installation of such pipes or mains.

§ 140-50. Promulgations of rules and regulations.

For the purpose of carrying out the purpose and provision of this chapter, the Water Department may prepare

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rules and regulations not inconsistent with the specific provisions hereof, which shall be complied with by all applications for water service and users thereof. Such rules and regulations shall be approved by the Town Board and shall be filed with the Town Clerk and shall be available for the guidance of all such applicants and users. Any person objecting to the provisions of any such rules and regulations may file such objection with the Town Board which shall determine the effect thereof.

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ARTICLE VIII
Penalties

§ 140-51. Penalties for offenses.

- A. In addition to any other violations set forth in this chapter or any statute of the State of New York, it shall be a violation for any person to cause damage to any water main, hydrant, meter or metering equipment, storage tower, standpipe or any facility or equipment used in providing water service by the Elma Water Department or for any person to turn on, without the permission of the Elma Town Board or a representative of the Elma Water Department, any hydrant which is a part of the water system operated by the Elma Water Department.
- B. Any person who violates any provision of this chapter which is declared to be an offense or violation shall be guilty of a violation and shall be punished by a fine not exceeding \$250 or by imprisonment not to exceed 15 days, or by both such fine and imprisonment.
- C. Where it is provided herein that a violation of this chapter, or any part or section thereof, shall result in a forfeiture or the imposition of a penalty, the Town Board may maintain an action or proceeding in any court of competent jurisdiction to collect such forfeiture or penalty and to compel compliance with this chapter by injunction or in any other legal manner.

ARTICLE IX
Leak Adjustment Policy (Service Line)
[Adopted 10-23-2019]

§ 140-52. Purpose.

The purpose of this policy is to provide a credit adjustment to the water account of a customer who has experienced an emergency situation involving the loss of metered water. The excess metered water will have occurred as a result of conditions beyond normal and reasonable control of the customer or other parties responsible for the use, care and maintenance of fixtures and devices that are part of the customer's water service system. Exceptions of this policy shall be approved by the Water Superintendent and the Town Supervisor.

§ 140-53. Definitions, abbreviations, and acronyms.

As used in this article, the following terms shall have the meanings indicated:

LEAK — An unintentional water loss caused by a broken service line between the meter pit and the house entry.

§ 140-54. Roles and responsibilities.

The customer is solely responsible for the water delivered beyond the Town's meter. It is the customer's responsibility to promptly discover, stop and report the loss of water. In addition, the customer is responsible for making arrangements to repair or have repaired the fixture or device causing the water loss. Although there is no obligation for the Town of Elma to adjust accounts when the water has been properly metered, it is the desire of the Town to encourage customers to make prompt and permanent repairs and to show consideration for the unusual circumstances by sharing the cost of the excessive billing charges.

§ 140-55. Process.

- A. The leak must be verified and repairs inspected by the Water Department.
- B. The customer must request the adjustment in writing by completing the leak request form. Forms are available at the Water Department office. Required information shall include:
 - (1) Name, service address where leak occurred and account number;
 - (2) Description of leak and date repaired;
 - (3) Copy of repair bill or material receipt;
 - (4) Signature of customer.
- C. The adjusted consumer's bill shall be calculated as follows:
 - (1) The Town may credit the customer's account per policy for the excess use subject to the following conditions:
 - (a) The meter was operating accurately, and not off an estimated reading;
 - (b) There was no evidence that the excessive use was due to an intentional or negligent act;
 - (c) The house and/or service line is over one year old;
 - (d) The customer has a good payment history;
 - (e) Customer will be responsible for all past-due balances;

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- (f) After being notified by the Town via billing, letter, door hanger, or by any other means, the customer took prompt and reasonable action to ascertain the cause of the excessive use and correct it;
 - (g) The customer took corrective action immediately (within 24 hours), upon discovering or being notified of a leak and provided the Town with proof of repair within 30 days from the billing date for the period in which the water loss occurred;
 - (h) No allowance shall apply to customers taking water for resale.
- (2) There will be a flat rate of 10% discount given on any unintentional water loss between the meter pit and house entry.
 - (3) (Reserved)
 - (4) Water loss adjustments will be limited to a one-time adjustment, per owner.
 - (5) Granting of an allowance adjustment shall be the sole discretion of the Town.
 - (6) A fee for administrative expenses may be deducted from the adjustment allowance.
 - (7) The Town shall recoup the cost of the water billed to the Town from the Erie County Water Authority and/or assigns, before it allows any adjustment allowance to the customer.
 - (8) The Town is not responsible for the maintenance and repair of the pipe and fixtures beyond the water meter.
 - (9) The customer submitting a request for adjustment shall not pay the bill that is being contested until approval or denial is determined. If determination is made after the due date the gross post will not be added due to the determination period of time.

§ 140-56. No exceptions.

An adjustment will not be given to cover unintentional water loss after the meter inside of the premises, excess water due to left-on hoses, excessive irrigation, water-power sump pumps or neglect of wear-and-tear items such as toilet flappers, leaking faucets, water-softening systems, humidifiers and any water-distributing device attached to the items.

Chapter 144

ZONING

[HISTORY: Adopted by the Town Board of the Town of Elma 7-18-1950 by Ord. No. 2. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 52.

Communication facilities — See Ch. 59A.

Dealers in motor vehicles — See Ch. 60.

Conservation easements — See Ch. 70.

Electrical standards — See Ch. 71.

Excavations — See Ch. 75.

Filling and grading — See Ch. 77.

Fire prevention — See Ch. 79.

Flood damage prevention — See Ch. 82.

Historic preservation — See Ch. 87.

Industrial Development Agency — See Ch. 88.

Mobile home parks — See Ch. 97.

Acreage lot development — See Ch. 100.

Sewers — See Ch. 115.

Stormwater management — See Ch. 120.

Subdivision of land — See Ch. 123.

Water — See Ch. 140.

ARTICLE I
Purpose; Definitions

§ 144-1. Statutory authority; purpose.

- A. Pursuant to the authority conferred by Article 16 of the Town Law of the State of New York and for each of the purposes specified therein, the Town Board of the Town of Elma, County of Erie and State of New York, has ordained and does hereby enact the following chapter regulating and restricting, by zones, the number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry and residence and providing for setbacks and line clearances or other purposes. Such regulations shall apply to the Town of Elma.
- B. These regulations are made in accordance with a Comprehensive Plan and are designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements.

§ 144-2. Definitions and word usage.

- A. Words used in the present tense include the future; the singular number includes the plural, and the plural the singular; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "occupied" includes the words "designed or intended to be occupied"; the word "used" includes the words "arranged, designed or intended to be used."
- B. Unless otherwise expressly stated, the following terms, for the purpose of this chapter, shall have the meanings herein indicated:

ACCESSORY BUILDING — A building such as a stable, playhouse, barn or greenhouse, which is subordinate or accessory to a main building on the same lot and which is not available to the public.

BASEMENT — That portion of a building that is partly below grade which has more than half of its height, measured from floor to ceiling, above the average finished grade of the ground adjoining the building.

BOARDINGHOUSE and/or ROOMING HOUSE — A private residence wherein rooms are rented to lodgers and/or boarders.

BUILDING AREA — The maximum area of a building and its attached accessories at ground level.

CARPORT — An open-sided auto shelter formed by extending the roof from a side of a building.

CELLAR — That portion of a building that is partly or entirely below grade, which has more than half of its height, measured from floor to ceiling, below the average finished grade of the ground adjoining the building.

COVERED PORCHES — Whether enclosed or not, shall be considered as part of the main building and shall comply with all setback requirements.

DEPTH OF LOT — In all cases, depth of lot required shall be measured from the street line and not from the center of the street or road.

DWELLING UNIT — One or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy by one family with separate toilets and facilities for cooking and sleeping. [Added 8-2-1972; amended 2-4-2015 by L.L. No. 1-2015]

FAMILY — [Added 8-2-1972; amended 2-4-2015 by L.L. No. 1-2015]

- (1) One or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of four or more persons who are not within the second degree of kinship shall not

be deemed to constitute a family.

- (2) Notwithstanding the definition in the preceding subsection, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, nonprofit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit as defined in the first subsection of this definition.

FARM — Any parcel of land which is used primarily for the raising of agricultural products, including fruits, vegetables, dairying, livestock, poultry, eggs or meat, together with the necessary buildings and equipment which houses such birds, animals or crops and necessary buildings for the storage and housing, processing, packaging or other processes necessary for the conduct of an individual farm business.

GARAGE — A building or that portion of a building used for housing one or more motor vehicles.

GARAGE, PRIVATE — A garage maintained primarily for the convenience of the resident occupant of the premises and in which no business is carried on and no service rendered to the public.

GARAGE, PUBLIC — Any garage other than a private garage, available to the public, operated for gain and which is used for storage, repair, rental, greasing, washing, servicing, adjusting or equipping of automobiles or other motor vehicles.

HABITABLE ROOM — That space within four walls used or designed to be used in whole or in part for human habitation or part of the residence of one or more human beings.

HOTEL or INN — A building for the lodging, dining and entertaining of travelers.

JUNK BUSINESS — The maintenance of an area not in a completely enclosed building, where junk, waste, discarded or salvaged materials are bought, sold, exchanged, sorted, stored, baled, packed, disassembled, handled or abandoned.

JUNKYARD — The maintenance of an area not in a completely enclosed building, where junk, waste, discarded or salvaged materials are bought, sold, exchanged, sorted, stored, baled, packed, disassembled or abandoned.

KENNEL — The keeping of more than three dogs, cats or other household animals that are more than six months old.

LIVABLE FLOOR AREA OR SPACE — The area of the floors of a dwelling, excluding basements not designed for human occupancy, cellars, garages, breezeways, unenclosed or unheated porches or attics. It shall include only such floor area immediately under a roof for which the headroom is five or more feet, provided that at least 65% of such floor area has a ceiling height of at least seven feet; if such floor area is above another story, it has access to the floor below by a permanent, built-in stairway; and it meets the requirements of the Building Code for light and ventilation.⁸⁸ Measurements for "livable floor area" shall be made from exterior faces of exterior walls or from center lines of party walls except for areas under a sloping roof.

LOT — Any parcel of land occupied or intended to be occupied by one building or one unit group of buildings and its accessory buildings and uses and including such open spaces as are provided or as are required by this chapter. For any new or added construction, the "lot" shall be defined on the plan filed with the Building Inspector.

LOT WIDTH — The least horizontal distance across the lot between side lot lines, measured at the front setback of a main building erected or to be erected on such lot or at a distance from the front lot line equal to the required depth of the front yard.

88. Editor's Note: See Ch. 52, Building Construction.

§ 144-2 MOTEL — A building or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units designed primarily for transient automobile travelers and providing accessory off-street parking facilities. The term "motel" includes buildings designed as motor lodges, auto courts and similar appellations. § 144-2

MULTIPLE DWELLING — A dwelling which is either rented, leased, let or hired out to be occupied or is occupied as the temporary or permanent residence or home of three or more families living independently of each other, including, but not limited to, the following: a tenement, flat house, maisonette apartment, apartment house, apartment hotel, tourist house, bachelor apartment, studio apartment, kitchenette apartment, lodging house, rooming house, boardinghouse, furnished room house, club, sorority house, fraternity house, college and school dormitory, convalescent, old age or nursing homes or residences. It shall also include a dwelling, two or more stories in height and with five or more boarders, roomers or lodgers residing with any one family. **[Added 8-2-1972; amended 2-4-2015 by L.L. No. 1-2015]**

NONCONFORMING USE — A building, structure or use of land existing at the time of enactment of this chapter and which does not conform to the regulations of the district or zone in which it is situated.

OLD CAR STORAGE YARD — A lot containing one or more unserviceable automobiles.

PARKING LOT — Any open space other than highways used for the temporary parking of motor vehicles. (See Article IV.)

PLOT — A parcel of land larger than a lot and as it existed on the Town of Elma Official Zoning Use Map issued May 26, 1950, and adopted July 18, 1950.

RESIDENCE — A dwelling or building for occupancy in the whole by one or more families.

RIDING AND/OR BOARDING STABLE — An establishment where horses are for hire or space and services are rented to a nonresident of the premises for keeping and maintaining horses.

ROAD OR STREET LINE — The road or street line is the side or outer limit line of the highway right-of-way.

SETBACK — A distance determined from the highway right-of-way line and side and rear lot lines.

SIGN — Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public and to include billboards.

SINGLE-FAMILY RESIDENTIAL — A single-family residential building, to be used as a residence, to any one lot, for housekeeping of no more than one family. **[Added 2-4-2015 by L.L. No. 1-2015]**

STREET — Any road, avenue, street, lane, alley or other way set aside and used as a public thoroughfare or which has been dedicated to and accepted by the Town, county and/or state for that purpose.

SUBDIVISION — A parcel of land divided into several lots which front on one or more streets, the layout of which has been approved by the Town or the Planning Board as authorized to do so. (Refer to § 144-131.)

TRAILER or MOBILE HOME — A trailer vehicle or similar structure used for living and/or sleeping purposes and standing on wheels or on rigid supports.

TWO-FAMILY DWELLING — A building containing two dwelling units and designed or used exclusively for occupancy by two families living independently of each other, or two one-family dwellings having a party wall in common. **[Added 2-4-2015 by L.L. No. 1-2015]**

USE — The purpose for which a building, structure or premises or any part thereof is or are occupied and, if occupied, the purpose for which it may be occupied hereunder.

ZONING MAP — Indicates the boundaries of the zones adopted by the Town Board.

ARTICLE II
Zones Established; Zoning Map

§ 144-3. Establishment of zones. [Amended 10-1-2008 by L.L. No. 5-2008]

For the purpose of this chapter, the Town of Elma is hereby divided into eight classes of zones, for which regulations limiting height, bulk and arrangement of buildings have been prepared in Article XI, hereinafter referred to as:

Residential A Zone

Residential B Zone

Residential C and Agricultural Zone

Neighborhood Commercial C-1 District

Intermediate Commercial C-2 District

Major Commercial C-3 District

Industrial Zone

Elma Center Overlay

§ 144-4. Zoning Map. [Amended 6-3-1981]

These zone classes are shown on the Zoning Map hereinafter described and are indicated by colors and/or cross-hatching, as shown in the legend, and this map, and all amendments thereto, is hereby made part of this chapter.

§ 144-5. Filing and display of map.

The Zoning Map, when duly certified, shall be filed and displayed in the office of the Town Clerk and with the Zoning Board of Appeals and the Planning Board.

§ 144-6. Filing of map amendments.

All amendments which shall be made at any time shall be filed by the Town Clerk with the Zoning Board of Appeals and the Planning Board.

§ 144-7. Zone boundaries.

The boundaries of each of the created zones are hereby established as shown on the map entitled "Zoning Map — Town of Elma," on public display in the office of the Town Clerk, and which is hereby declared to be a part of this chapter.

§ 144-8. Interpretation of boundaries.

The Zone boundary lines are intended generally to parallel street lines at right angular distances there from as indicated in the legend and to follow existing lot lines or their extensions or corporate boundary lines as indicated on the Zoning Map. In cases of conflict of boundaries, the Zoning Map shall prevail.

§ 144-9. Conformity to regulations required.

From and after the date this chapter becomes effective, every building or portion of building erected, altered, added to, converted or relocated and every use within a building or accessory thereto or upon any premises in any zone shall be in conformity with the provisions of this chapter.

ARTICLE III
General Regulations

§ 144-10. Nonconforming uses, buildings and lots.

- A. An existing use, building and/or lot which is lawful on the effective date of this original chapter and is made unlawful by this original chapter or which is lawful under the provisions of this chapter as originally enacted and is made unlawful thereafter by an amendment to this chapter shall be known as and referred to herein as a "nonconforming use," with the exception of specific uses listed elsewhere in this section.
- B. With the exception of specific uses listed elsewhere in this section, a nonconforming use may be continued, provided that such continuation remains the same in extent and nature as of the time when such use becomes nonconforming.
- C. The nonuse of a nonconforming use for a period of one year shall be deemed an abandonment of such use, and it shall not thereafter be resumed except with permission of the Zoning Board of Appeals.
- D. A nonconforming use may be extended or enlarged on the same premises, upon compliance with all other provisions of the Zoning Ordinance and the Town of Elma Building Code,⁸⁹ provided that:
 - (1) If the use to be extended or enlarged is of a commercial nature, the extension or enlargement shall be upon express permit of the Zoning Board of Appeals after a public hearing.
 - (2) If the use to be extended or enlarged is of an industrial nature, such extension or enlargement shall be with written consent of 75% of all property owners within an area of 500 feet in all directions from the property involved and upon express permit of the Zoning Board of Appeals after a public hearing.
- E. Where any building has been damaged by fire or other cause to the extent of more than 75% of its physical value, it shall not be repaired or rebuilt, except as provided in this chapter and the Elma Building Code;⁹⁰ provided, however, that a building so damaged, which housed a nonconforming use, may be rebuilt on existing foundations upon compliance with all other provisions of this chapter and the Building Code.
- F. The following nonconforming uses may be continued for a period of three years, provided that after such period any such nonconforming use shall become an unlawful use and shall be terminated:
 - (1) In any residential, agricultural or commercial zone, any nonconforming use (except the cultivation of soil or maintenance of areas for the raising or growing of crops, plants, horses and cows) not in an enclosed building. This provision specifically includes, but is not limited to, a junk business or junkyard, auto wrecking and dismantling and the outdoor storage of motor vehicles which do not qualify for a New York State inspection sticker but is not intended to prohibit the storage of usable, uninfluenced motor vehicles used for farming purposes.
- G. A nonconforming use which is dangerous or hazardous to persons and/or property shall become an unlawful use and shall be terminated within 30 days after said use is prohibited.

§ 144-11. Sanitation.

- A. All structures shall meet the rules and regulations of the New York State, Erie County and local Health Departments in providing for nonpublic drinking water supplies and disposal of sewage wastes. On account of the varying topographical and soil conditions existing in various zones in the Town, the Zoning Enforcing Officer shall see that in issuing permits, with the aid and assistance and recommendation of the State, County and Town Health Departments, that all nonpublic water supply and new or modified sewage disposal systems

⁸⁹. Editor's Note: See Ch. 52, Building Construction.

⁹⁰. Editor's Note: See Ch. 52, Building Construction.

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shall be approved by the Erie County Department of Health.

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- B. No structure may be occupied unless all sanitary requirements of the Building Code⁹¹ and of the Erie County Health Department are complied with.
- C. Any structure vacated for a period of six months or more may not be reoccupied until all sanitary requirements of the Erie County Health Department are complied with, nor may such premises be reoccupied or water service be resumed by the Elma Water Department until the premises have been inspected by the Elma Building Inspector. [Amended 11-5-1986 by L.L. No. 8-1986]

§ 144-12. Topsoil.

For regulations pertaining to topsoil, see the Gravel Pit Ordinance.⁹²

§ 144-13. Roadside stands.

Roadside stands shall not be permitted except as defined in § 144-14, Farm produce stands.

§ 144-14. Farm produce stands.

A farm produce stand is a booth, shed, structure or erection used or intended to be used for the sale of farm produce, at least 50% of which has been grown on the premises, and is capable of being taken down and shall be removed when not actually used for sale purposes. Any part of such a stand shall be set back at least 15 feet from the road line, shall have an area of not more than 250 square feet and shall not exceed 10 feet in height. Each such stand shall have an area for parking purposes, at least 25 feet in depth and 40 feet in width, parallel to the road line and not within the paved portion of the highway right-of-way. The Town Board may order removal on five days' written notice for misuse, objectionable use, traffic hazard or where such use unreasonably interferes with the use and enjoyment of adjacent or nearby premises. Failure to remove after issuance of such notice shall constitute a violation of this chapter.

§ 144-15. Offensive businesses.

No auto dump, old car storage yard, salvage yard, dump, slaughterhouse, fertilizer plant or other offensive business shall exist or be permitted to exist, except that such uses may be permitted in an Industrial Zone with special permission of the Zoning Board of Appeals after a public hearing.

§ 144-16. Construction.

- A. All buildings shall meet the minimum requirements of the Building Code of the Town of Elma⁹³ and amendments made thereto from time to time. Buildings, accessory buildings and yards are to be so arranged and constructed as to conform in general appearances to the standard of the neighborhood in which they are located. No existing building and/or accessory building may be attached by breezeway or passageway to be used as a residence, except by specific permission of the Zoning Board of Appeals.
- B. Any use permitted elsewhere in this code, excluding residential use in any zone, shall be reviewed by the Planning Board prior to the application of use as to the appearance and type of construction as to be compatible with adjoining properties and upon final approval by the Town Board, after hearing in front of the Board. [Added 6-7-2000]

91. Editor's Note: See Ch. 52, Building Construction.

92. Editor's Note: See Ch. 75, Excavations, Art. I.

93. Editor's Note: See Ch. 52, Building Construction.

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§ 144-17. Accessory buildings.

No accessory building shall be constructed nearer to the front or side lot lines than is provided for in the regulations limiting height, bulk and arrangement of buildings. (See Article XI.)

§ 144-18. Signs.

- A. There shall not be erected any signs in any zone in the Town of Elma except as allowed in the separate zones. (Refer to zones for size allowable.) Permission for the erection of a sign of larger size than is allowed in a particular zone requires the special permission of the Zoning Board of Appeals.
- B. Any abandoned sign may be removed by the Building Inspector or at his direction, provided that due notice to remove said sign is given in person or by regular mail to the last known owner, with a reasonable opportunity for said owner to remove. A sign shall be deemed "abandoned" when it advertises a product or activity no longer in existence at the location or when the sign or its supporting structure is in obvious need of repair or presents a hazard to others. Removal must be effected without committing a trespass, and all costs associated therewith shall be assessed to the property owner. **[Added 3-19-1986 by L.L. No. 5-1968]**

§ 144-19. Excavations.⁹⁴

All openings and excavations made in any part or portion of the Town of Elma nearer than 50 feet from the highway line shall be fenced or guarded to prevent damage to humans and animals. Upon failure of the owner to comply on written notice, the work will be completed by the Town and the cost thereof charged to the owner.

§ 144-20. Gravel pits.

For regulations pertaining to gravel pits, see the Gravel Pit Ordinance.⁹⁵

§ 144-21. Public buildings and utilities.

Upon petition, the Town Board, after due notice and public hearing, has the power to, and may, authorize the construction and use, in any of the zones outlined, of public or semipublic buildings, such as Town halls, public libraries, railroad stations, aviation fields and such other buildings, oil and gas transmitting companies and utilities as may seek permits.

§ 144-22. Hospitals.

Within any zone a hospital or sanatorium intended and operated primarily for the treatment of patients may be permitted upon the approval of the Town Board after due notice and public hearing and subject to the following conditions:

- A. If such hospital or sanatorium is intended to care for any cases of contagious or infectious diseases or is designed for the treatment of tuberculosis patients or those suffering from mental disorders, all the structures which form such hospital or sanatorium shall be not less than 500 feet from any property or street line, except on permission of the Town Board after public hearing.
- B. If such hospital or sanatorium is not for the treatment of any such contagious diseases or for tuberculosis or mental patients, any building thereof may be situated not less than 200 feet from any property line.

§ 144-23. Cemeteries.

Within any zone a cemetery may be permitted upon approval of the Town Board after due notice and public hearing

94. Editor's Note: See also Ch. 75, Excavations.

95. Editor's Note: See Ch. 75, Excavations, Art. I.

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and subject to the following conditions:

- A. That there shall be filed with such application the consents, in writing duly acknowledged, of the owners of record of 50%, measured linearly around the boundaries, of the property contiguous to the property for which such permit is sought.
- B. That at least 10 days' written notice of such pending application shall be given by mail by the Town Clerk to all persons recorded on the last preceding assessment roll as owning property within 2,500 feet of the property for which such permit is sought, and such service of notice by mail to such property owners shall be deemed to have been duly effected when duly stamped envelopes containing such notices and addressed to their last known address shall have been duly deposited in the mail.
- C. That no graves within such cemetery area nor structure shall be nearer than 10 feet to any property line and that such ten-foot strips along the edges of any such cemetery shall be suitably landscaped and planted so as to screen such cemetery from view so far as practicable, except as covered in § 144-10, relating to nonconforming uses.
- D. No interment, except where nonconforming uses intervene as covered in § 144-10, shall be made in any cemetery or other place of burial within 250 feet horizontal measurement from the high water mark or precipitous bank of any lake, pond or reservoir or of any spring, stream or watercourse within the Town of Elma.

§ 144-24. Visibility at intersections.

No sign, fence, wall, hedge, shrub planting or tree foliage which obstructs vision at elevations between three and seven feet above the street level shall be placed or maintained within the triangular area formed by two intersecting street lines and a line connecting points thereon 30 feet distant from their point of intersection.

§ 144-25. Riding, boarding and livery stables; dog kennels.

For regulations pertaining to riding, boarding and livery stables and dog kennels, see § 144-58A(4).

§ 144-26. Picnic grounds.

Except by permission of the Town Board and after a public hearing, no public picnic ground may be established or operated for gain in any zone. Property owners' own personal or family use is not prohibited by this section.

§ 144-27. Utility lines.

All utility lines shall be maintained underground insofar as is reasonable and possible. In approving new subdivisions, the Planning Board may require that all new lines shall be carried underground or on poles located at the junction at the rear of lots instead of on road rights-of-way, except where existing poles may be used.

§ 144-28. (Reserved)⁹⁶

§ 144-29. Obstructions in public rights-of-way.

No trees, fences, shrubs or other foreign objects shall be placed in a highway right-of-way.

§ 144-30. Uses not specifically permitted.

Any use, activity, operation or facility not specifically authorized or permitted by this chapter may be permitted only with the approval of the Town Board after public hearing unless prohibited herein.

96. Editor's Note: Former § 144-28, Taverns and clubs, was repealed 1-19-1983.
82:940

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§ 144-31. Lot area.

No lot area shall be reduced or diminished so that the yards or other open spaces thereon shall be less than prescribed by this chapter, nor shall the population density be increased in any manner except in conformance with area requirements herein established.

§ 144-32. Yards.

No yard or open space provided for one lot for the purpose of complying with this chapter shall be considered as providing open space or yard required on any other lot.

§ 144-33. Driveways.

In no zone shall a driveway be closer than two feet from a lot line.

§ 144-34. Prohibited uses.

- A. Any use prohibited in an Industrial Zone is prohibited in Residential A, B and C and Commercial Zones.
- B. Any use prohibited in a Commercial Zone is prohibited in Residential A, B and C Zones.
- C. Any use prohibited in a Residential C Zone is prohibited in a Residential A and B Zone.
- D. Any use prohibited in a Residential B Zone is prohibited in a Residential A Zone.

ARTICLE IV
Off-Street Parking

§ 144-35. Parking spaces required.

After the effective date of this chapter, off-street parking spaces shall be provided as hereinafter specified at the time a building or structure is erected or at the time a new use of open land is established. In the case of an enlargement of any existing building, structure or use after the effective date of this chapter, off-street parking spaces shall be provided as hereinafter specified for the enlarged portion of such building, structure or use.

- A. No existing off-street parking area shall be reduced in capacity so as to be less than required by this chapter, or, if such parking capacity is already less than herein required, such parking area shall not be further reduced; provided, however, that a reduction in such existing parking area shall be allowed if equivalent parking space is provided for the use involved.
- B. In the case of change of use which would result in requirement for a greater parking area than is provided, the Zoning Board of Appeals shall determine the number of additional spaces to be required.

§ 144-36. Dwellings.

Off-street parking spaces for dwellings shall be required as follows:

- A. Single-family or two-family dwelling: one space for each dwelling unit.
- B. Multiple dwellings: two spaces for each dwelling unit. **[Amended 8-2-1972]**
- C. Tourist home, hotel, motel, rooming or lodging house: one space for each unit accommodation.
- D. Additional spaces for accessory uses:
 - (1) Office for treatment of humans: five spaces for each office.
 - (2) Other offices: two spaces for each office.

§ 144-37. Institutional uses.

Off-street parking spaces for institutional uses shall be required as follows:

- A. Hospital: 1.5 spaces for each bed.
- B. Sanatorium, convalescent home: one space for each five beds.
- C. Home for aged or orphanage: one space for each five persons in residence.

§ 144-38. Places of assembly.

Off-street parking spaces for places of assembly shall be required as follows:

- A. School: one space for each classroom, plus one space for each five seats in the auditorium.
- B. Church, principal or accessory auditorium, theater, stadium or sports arena: one space for each five seats.
- C. Library, museum or art gallery: one space for each 300 square feet of gross floor area.
- D. Bowling alley: 10 spaces per alley.
- E. Dance hall or studio, skating rink or other places of public amusement not otherwise specified: one space for each 100 square feet of gross floor area.

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F. Eating or drinking establishments, principal or accessory:

(1) Drive-in type: three spaces for each 25 square feet of gross floor area.

(2) Other types: two spaces for each five seats.

G. Club or lodge: one space for each 100 square feet of floor area used for club or lodge purposes, plus one space for each sleeping room.

H. Mortuary or funeral parlor: 10 spaces for each parlor.

I. Swimming pools for commercial purposes or private club, principal or accessory, other than private pools which are accessory to a private residence: one space for each 25 square feet of pool area.

§ 144-39. Business or industrial uses.

A. Furniture, floor covering or appliance stores, custom shops, wholesale business: one space for each 700 square feet of gross floor area.

B. (Reserved)⁹⁷

C. Gasoline station, public garage or repair garage, principal or accessory: three spaces for each service bay.

D. Rapid car wash as a principal use: A minimum of 75 reservoir spaces are provided for one wash rack or lane, plus 25 reservoir spaces for each additional rack or lane.

E. Food store, shopping center or group of stores over 20,000 square feet of gross floor area: one space for each 175 square feet of gross floor area.

F. Other individual retail stores or service establishments: one space for each 175 square feet of gross floor area.

G. Office for treatment of humans, except dentist offices: two spaces for each office or suite of offices, plus one space for each 200 square feet of gross floor area.

H. Other business or professional offices: two spaces for each office or suite of offices, plus one space for each 300 square feet of gross floor area.

I. Banks: one space for each 350 square feet of floor area.

J. Drive-in banks: At least 10 reservoir spaces are to be provided on the lot for each drive-in teller's window. Such reservoir spaces shall be in addition to required parking spaces.

K. Manufacturing, storage or other industrial use. Parking shall be provided in such amount that no employee need park on a public street or on a lot more than 600 feet from the premises so used.

§ 144-40. Additional uses.

For all other principal uses not above enumerated or excepted, off-street parking spaces shall be required as follows: one space for each 350 square feet of gross floor area.

§ 144-41. Mixed uses.

Except as otherwise provided in § 144-43, where any building or lot is occupied by two or more uses having different parking requirements, the parking requirement for each use shall be computed separately to determine the total off-street parking requirement.

97. Editor's Note: Former Subsection B, which provided for parking spaces for new or used car sales, was repealed 11-5-1986 by L.L. No. 12-1986. 82:944

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§ 144-42. Units of measurement.

- A. Size of parking space. For the purpose of computing gross parking area for required off-street parking, 350 square feet of unobstructed net standing, maneuvering or access area shall be considered one parking space. However, a lesser area may be considered as one space if the Zoning Enforcement Officer certifies that the layout and design of the parking area are adequate to permit convenient access and maneuvering. In any event, the size of a parking space shall be at least 20 feet long and nine feet wide exclusive of access or maneuvering area. **[Amended 6-3-1981]**
- B. Gross floor area. Gross floor area shall include all areas of a building used or occupied by any traffic generator mentioned in § 144-35; provided, however, that basement or cellar floor area not used for processing, servicing or sales of goods or merchandise shall not be counted as gross floor area.
- C. Seats. In places of assembly where bench-type seats are provided or where standing patrons are served at a counter or bar, each 20 lineal inches of such seating or standing space shall be considered as one seat for the purpose of determining off-street parking requirements.
- D. Fractional units. When application of the units of measurement to determine off-street parking spaces results in a fractional parking space of 1/2 or more, one parking space shall be required.

§ 144-43. Accessory uses; joint facilities.

- A. Accessory uses.
 - (1) No off-street parking spaces shall be required for uses accessory to any institutional use specified in § 144-37 or for an accessory restaurant used primarily for students, patients, tenants or employees occupying a principal building.
 - (2) In the case of accessory retail sales, restaurants or swimming pools, the parking requirement for either the accessory use or the principal use, whichever requirement is less, shall be reduced by 50%.
- B. Joint facilities.
 - (1) In the case of a church and school on the same lot, the lesser parking requirement shall be waived.
 - (2) Where places of assembly specified in § 144-38 are located on the same lot with other uses, the Zoning Board of Appeals may permit a reduction in the number of required off-street parking spaces for such places of assembly.
 - (3) Where public off-street parking facilities are available, other than off-street parking provided for a public building, the Zoning Board of Appeals may permit a reduction in the number of required off-street parking spaces for uses located on any lot within 600 feet of such public parking facility.

§ 144-44. Site requirements.

- A. Location of required parking spaces.
 - (1) General provisions. All required off-street parking spaces shall be provided on the same lot with the building or use they serve, except as provided in Subsection A(2), Group facilities.
 - (2) Group facilities. In any commercial or manufacturing district, required off-street parking spaces may be provided in group parking facilities designed to serve two or more buildings or uses on different lots, provided that:
 - (a) The total parking spaces in such group facility shall not be less than the sum of the requirements for the various uses computed separately; and

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- (b) All required parking spaces shall be not more than 600 feet from the boundary of the lot on which such buildings or uses are located.
- B. Encroachment of required parking spaces prohibited. All areas counted as required off-street parking area shall be unobstructed and free of other uses except off-street loading or unloading.
- C. Guaranty for off-site parking spaces. In any case where required off-street parking spaces are not provided on the same lot with the building or use they serve, such off-street parking spaces shall be subject to deed, lease or contract restrictions acceptable to the Town Attorney, binding the owner, his heirs or assigns to maintain the required number of spaces available throughout the life of such use.
- D. Additional requirements for all open off-street parking spaces. All open off-street parking spaces shall be considered as automotive use areas and shall be subject to the requirements of Subsection E in addition to the provisions of this section.
- E. Automotive use areas. Any portion of a lot used for open off-street parking or reservoir space for open sales, service or storage areas for motor vehicles, contractors' equipment or boats shall be deemed to be an automotive use area. New automotive use areas or enlargements of existing automotive use areas shall be subject to the following requirements:
- (1) Surfacing. Every automotive use area and access driveway thereto shall be surfaced with a durable and dustless material and shall be so graded and drained as to dispose of surface water accumulations.
 - (2) Lighting. Any fixture used to illuminate any automotive use area shall be so arranged as to direct the light away from the street and from adjoining premises in any residential district.
 - (3) Screening. Every automotive use area, except off-street parking areas for less than five vehicles, shall be screened from any adjoining lot in any residential district, including lots situated across the street, as follows:
 - (a) Along a street line by a planting strip five feet wide; provided, however, that no shrub planting or tree foliage shall be placed or maintained which obstructs vision at an elevation between three and seven feet above the street level. Such screening may be interrupted by normal entrances or exits.
 - (b) Along a rear lot line or an interior side lot line by a compact evergreen hedge which will reach a height of five feet within three years or by a solid fence or masonry wall five feet in height. Such screening shall be maintained in good condition at all times.
 - (4) Access. No entrance or exit to any automotive use area shall be permitted within 30 feet of any intersecting street lines and, except for off-street parking areas for uses permitted in any residential zone requiring less than 10 parking spaces, no entrance or exit shall be permitted within 10 feet of a lot in any residential zone. Access to automotive use areas, except for off-street parking areas in residential zones for less than 10 vehicles shall be approved by the Zoning Enforcement Officer and shall be so arranged that vehicles shall not back into a street. **[Amended 6-3-1981]**
 - (5) Restriction. No automotive use area shall be used for auto wrecking or for storage of wrecked, partially dismantled or junked vehicles or equipment or motor vehicles which do not qualify for New York State motor vehicle registration.

ARTICLE V
Residential A Zone

§ 144-45. Permitted and prohibited uses.

A. Buildings and structures in a Residential A Zone and uses thereof shall be limited to:

- (1) One single residential building, to be used as a residence, to any one lot for one family or housekeeping unit.
- (2) A private garage for personal cars only or accessory buildings customarily incident to any use permitted in this section.
- (3) A residence containing a professional office for use of residential occupant.
- (4) A nonilluminated name- and/or professional plate not over two square feet in area may be erected at any point between the road line and the prevailing front line, provided that there shall not be more than one such sign on any lot and that it shall refer only to the profession conducted on the premises upon which it is located.
- (5) Saddle and driving horses may be kept at the rate of two acres for the first such horse and, for more than one horse, one acre for each such additional horse, up to a total of nine horses, provided that the stables are kept free from odor and fumes and that manure is stored in pits or in closed containers located to the rear of lots, equidistant from the side lot lines. **[Amended 3-5-1986 by L.L. No. 3-1986]**

B. Uses not permitted; uses requiring special permission.

- (1) The following uses shall not be permitted: taverns, clubs, hospitals, nursing homes, domestic animals other than house pets, boardinghouses, trailers, camps, commerce or industry.
- (2) Funeral homes may be permitted with special permission of the Zoning Board of Appeals.

§ 144-46. Floor space.

For regulations pertaining to floor space, see § 144-97A.

§ 144-47. Lot size.

For regulations pertaining to lot size, see § 144-97C.

§ 144-48. Trailers (mobile homes).⁹⁸

No trailer in excess of 500 cubic feet is to be parked on any lot unless the owner already has a livable home on the lot, in which event a trailer may be parked in the rear yard. Such trailer cannot be occupied.

§ 144-49. Height, bulk and arrangement of buildings.

For regulations limiting the height, bulk and arrangement of buildings, see § 144-97.

§ 144-50. Swimming pools.

A private family swimming pool shall be permitted as an accessory use as long as it is located entirely within the rear yard and no part of the pool or deck is closer to the lot line than 10 feet. No pool can be located closer than 10

⁹⁸ Editor's Note: For additional provisions pertaining to the use and parking of trailers, see Ch. 97, Mobile Home Parks, and Ch. 134, Vehicles and Traffic, § 134-4.

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feet from a sanitary leach field, sand filter or tile field.

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ARTICLE VI
Residential B Zone

§ 144-51. Permitted and prohibited uses.

A. Buildings and structures in a Residential B Zone and uses thereof shall be limited to:

- (1) One single residential building, to be used as a residence, to any one lot, for housekeeping of no more than two families.
- (2) A private garage for personal cars only or other accessory building customarily incident to any use permitted in this section.
- (3) A residence containing a professional office for use of a residential occupant.
- (4) A nonilluminated name- and/or professional or trade plate not over two square feet in area may be erected at any point between the road line and the prevailing front line, provided that there shall not be more than one such sign on any lot and that it shall refer only to the business conducted on the premises upon which it is located.
- (5) Saddle and driving horses may be kept at the rate of two acres for the first such horse and, for more than one horse, one acre for each such additional horse, up to a total of nine horses, provided that the stables are kept free from odor and fumes and that manure is stored in pits or in closed containers located to the rear of lots, equidistant from the side lot lines. **[Amended 3-5-1986 by L.L. No. 4-1986]**

B. Uses not permitted; uses requiring special permission.

- (1) The following uses shall not be permitted: taverns, clubs, hospitals, nursing homes, tourist homes, airports, dog kennels, fur farms, commerce or industry.
- (2) Funeral homes may be permitted with special permission of the Zoning Board of Appeals.

§ 144-52. Floor space.

For regulations pertaining to floor space, see § 144-98A.

§ 144-53. Lot size.

For regulations pertaining to lot size, see § 144-98C.

§ 144-54. Trailers (mobile homes).⁹⁹

No trailer in excess of 500 cubic feet is to be parked on any lot unless the owner already has a livable home on the lot, in which event a trailer may be parked in the rear yard. Such trailer cannot be occupied.

§ 144-55. Height, bulk and arrangement of buildings.

For regulations limiting the height, bulk and arrangement of buildings, see § 144-98.

§ 144-56. Swimming pools.

A private family swimming pool shall be permitted as an accessory use as long as it is located entirely within the rear yard and no part of the pool or deck is closer to the lot line than 10 feet. No pool can be located closer than 10

⁹⁹ Editor's Note: For additional provisions pertaining to the use and parking of trailers, see Ch. 97, Mobile Home Parks, and Ch. 134, Vehicles and Traffic, § 134-4.

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feet from a sanitary leach field, sand filter or tile field.

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§ 144-57. Boarding- and rooming houses.

A boarding- and rooming house, not to exceed two boarders and roomers, is permissible in any one housekeeping unit, provided that no separate housekeeping privileges are permitted.

ARTICLE VII
Residential C and Agricultural Zone

§ 144-58. Permitted and prohibited uses.

A. Buildings and structures in a Residential C and Agriculture Zone and uses thereof shall be limited to:

- (1) Any building, structure or premises used, and any building or structure erected, on any one lot intended and designed as a private residence to accommodate not more than two families, a farm building, greenhouse, library, church, school, park or playground. **[Amended 6-7-2000]**
- (2) (Reserved)¹⁰⁰
- (3) A name- and/or professional plate not over eight square feet in area to advertise for the produce grown upon or services rendered from the premises may be erected at any point between the road line and the prevailing front building line, provided that there shall not be more than one such sign on any lot and that it shall refer only to the business conducted on the premises upon which it is located.
- (4) Riding or boarding stables, kennels and fur farms are subject to the filing, with the Zoning Board of Appeals, written unanimous consent of all property owners within a radius of 1,000 feet of the lot on which such riding or boarding stable, kennel or fur farm is proposed.
- (5) A residence containing a professional office for use of a residential occupant. **[Added 6-7-2000]**

B. The following uses shall not be permitted: taverns, clubs, trailer camps, airports, industry and commerce, except where specifically permitted elsewhere in this chapter and/or any other Town of Elma ordinance.

§ 144-59. Floor space.

For regulations pertaining to floor space, see § 144-99A.

§ 144-60. Lot size.

For regulations pertaining to lot size, see § 144-99C.

§ 144-61. Trailers (mobile homes).¹⁰¹

No trailer in excess of 500 cubic feet is to be parked on any lot unless the owner already has a livable home on the lot, in which event a trailer may be parked in the rear yard. Such trailer cannot be occupied.

§ 144-62. Height, bulk and arrangement of buildings.

For regulations limiting the height, bulk and arrangement of buildings, see § 144-99.

§ 144-63. Swimming pools.

A private family swimming pool shall be permitted as an accessory use as long as it is located entirely within the rear yard and no part of the pool or deck is closer to the lot line than 10 feet. No pool can be located closer than 10 feet from a sanitary leach field, sand filter or tile field.

100.Editor's Note: Former Subsection A(2), Multiple dwellings, as amended, was repealed 9-6-1995. See now Art. XVI, Multiple Dwellings.

101.Editor's Note: For additional provisions pertaining to the use and parking of trailers, see Ch. 97, Mobile Home Parks, and Ch. 134, Vehicles and Traffic, § 134-4.

§ 144-64

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§ 144-64. Boardinghouses and rooming houses.

A boardinghouse and rooming house, not to exceed two boarders and roomers, is permissible in any one housekeeping unit, provided that no separate housekeeping privileges are permitted.

§ 144-65. Farm buildings.

- A. Building permits shall be required for the erection, construction or alteration of any building or structure to be used for customary agricultural purposes. The location of any building or structure shall be governed by the regulations limiting height, bulk and arrangement of buildings. (See Article XI.)
- B. Nothing herein contained shall in anywise be construed to modify, limit, abrogate or annul any provision of the Building Code of the Town of Elma,¹⁰² as it now exists or hereinafter may be amended and modified, except as provided in Article XI.

§ 144-66. Utility permits.

Permits are required for all utility structures other than any municipally owned, and upon written application, including survey and plans, to the Town Board.

§ 144-67. Camps.

- A. On the approval of the Zoning Board of Appeals, temporary permits for not to exceed five years may be granted in any Residential C and Agricultural Zone for a camp, provided that:
 - (1) The fee set by the Town Board has been paid.
 - (2) There is filed with such application the consents, in writing duly acknowledged, of the owners and the lessees of record of 50% of all property, measured lineally around the boundary contiguous to the property for which such permit is sought.
 - (3) At least 10 days' notice of such pending application is given by mail by the Clerk of such Zoning Board of Appeals to all persons recorded on the last preceding assessment roll as owning property within 2,500 feet of the property for which such permit is sought, and such service of notice by mail to such property owners and lessees shall be deemed to have been effected when duly stamped envelopes containing such notices and addressed to their last known address shall have been duly deposited in the mail.
 - (4) No portion of the property for which such permit is sought is within 1,000 feet of any body of water or watercourse which is a part of any public water supply system.
 - (5) The number of persons to be accommodated in such camp shall not exceed one for each 10,000 square feet of area within such grounds.
 - (6) No camp structure shall be located within 300 feet of any property line.
- B. All existing camps are hereby required to file for a permit as required herein. All applications for permits shall include Erie County Health Department certifications of sanitation and health facilities and capacities. Permits will be required of all camps within the Town of Elma for the year 1955 and for subsequent periods.

§ 144-68. Institutions.

Any institution is permissible if recommended by the Planning Board and approved by the Town Board after a public hearing.

102.Editor's Note: See Ch. 52, Building Construction.

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§ 144-69. Golf courses.

Private golf courses, operated by a nonprofit membership corporation exclusively for members and guests, including club facilities, pro shop, accessory dining room with or without bar facilities and normal accessory service buildings, shall be permitted.

§ 144-70. Agricultural accessory uses.

Farm truck garden, dairy, nursery or greenhouse and all other customary incidental agricultural occupations are permissible, such as, without thereby limiting the generality of the foregoing, the housing of livestock regularly maintained on such farm, farm equipment and crops or supplies; the making of cider; the bottling of milk and cream produced on the premises from livestock on such farm when approved by the County Department of Health; the cold storage of farm produce produced upon said farm, together with the use of structures for these and similar purposes, provided that any structure so used shall not be within 75 feet of a public road line or nearer than 25 feet from any other property line.

ARTICLE VIII
Neighborhood Commercial (C-1) District
[Added 10-1-2008 by L.L. No. 5-2008¹⁰³]

§ 144-71. Statement of intent.

The Neighborhood Commercial (C-1) District is intended to provide a commercial zoning district that meets the daily needs of adjacent residential neighborhoods without affecting the character of the surrounding residential area. This district's regulations allow for the establishment of minor commercial uses in structures consisting of a footprint of no larger than 3,000 square feet, with the total area of the structure not to exceed 6,000 square feet, that complement surrounding neighborhoods. Preserving the character of the neighborhood through aesthetics and buffering as well as protecting the public safety and welfare is a high priority and is encouraged.

§ 144-72. Permit required.

- A. No person, firm, or corporation, not already using buildings for business purposes, shall use any existing buildings or lands for any use, other than for normal farming purposes, without first procuring a permit for such use from the Town Board of the Town of Elma, which said permit shall only be issued after a hearing before the Town Board. The Town Board may refuse any such permit after such hearing if it appears to violate the Zoning Ordinance or if said proposed business or industrial use constitutes a nuisance or will imperil the health and well-being of any of the citizens of the Town.
- B. If such use is proposed for a building to be erected, the Town Board, after hearing held before it, may grant a preliminary use permit for a use described in § 144-74, and thereafter the Building Inspector may issue a building permit for such building in the manner provided in the Elma Code. When the building is completed, a formal use permit, to be issued after application therefor and a hearing before said Town Board, shall be required before a certificate of occupancy is issued by the Building Inspector.

§ 144-73. Effect upon other zoning requirements.

Where the standards of the C-1 District conflict with other regulations of the Town of Elma Code, the more restrictive standards shall apply.

§ 144-74. Permitted uses.

The following is a list of uses that are permitted within the C-1 District. The maximum building footprint shall be 3,000 square feet, with the total area of the building not to exceed 6,000 square feet (two-story maximum).

- A. Principal.
 - (1) Agriculture.
 - (2) Single-family residential.
 - (3) Two-family residential.
 - (4) Residential on the upper floors of an approved commercial use, limited to two dwelling units.
[Amended 2-4-2015 by L.L. No. 1-2015]
 - (5) Home occupations.
 - (6) Government and community facilities.
 - (7) Churches.

103.Editor's Note: This local law also repealed former Art. VIII, Commercial Zone, as amended.
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- (8) Meeting rooms for private clubs and assembly halls.
- (9) Child-care centers.
- (10) Personal service establishments, including but not limited to beauty salons, barbershops, and minor appliance/electronic repair.
- (11) Professional and medical offices.
- (12) Art, music, or photography studios.
- (13) Minor retail sales.
- (14) Bakery and confectionary shops, including the manufacture of baked and confectionary goods primarily for on-site sale.
- (15) Food and convenience stores (no drive-through facilities).
- (16) Restaurant, with indoor or outdoor seating (no drive-through facilities).

B. Accessory.

- (1) Uses and structures customarily incidental to permitted uses.
- (2) Private garages, barns, or sheds with a maximum size of 250 square feet. (Refer to § 144-17, Accessory buildings.)
- (3) Temporary food or agricultural stands. (Refer to § 144-14, Farm produce stands.)

§ 144-75. Uses permitted by special use permit.

For the purposes of considering uses that may not have been specifically listed as a permitted use nor prohibited within the C-1 District, but that warrant consideration because the Town feels that the use may comply with the intent of the C-1 District, the Town Board, following a public hearing, may issue a special use permit, subject to § 144-135, so long as the use is not permitted in the C-2, C-3, or Industrial Zoning District, in which a special use permit shall not be granted. In granting a special use permit, the maximum building footprint shall not exceed 3,000 square feet, with the total area of the building not to exceed 6,000 square feet (two-story maximum).

§ 144-76. Expansion of existing buildings.

- A. The maximum building footprint size for a new building in the C-1 District is 3,000 square feet. Any existing building within the C-1 District (as of the date of the first adoption of the new C-1 District, October 1, 2008) may expand by up to 50% over its current size. These expansions, up to 4,500 square feet, are permitted as of right through site plan approval.
- B. Buildings that are currently less than 3,000 square feet (maximum building footprint for a new one-story building) may expand up to a total footprint size of 4,500 square feet (150% of the maximum building footprint) as of right through site plan approval.
- C. Multiple expansions to a building may occur, so long as the cumulative size of expansions does not exceed the maximum expansion that would have been permitted on the building at the time of adoption of the C-1 District.
- D. If this allowable expansion (up to 50%) results in a building over a footprint of 4,500 square feet (150% of the allowable building size), the expansion will require a special use permit from the Elma Town Board.
- E. As with new buildings, these permitted existing building expansions will also allow second stories.

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F. Building expansions in excess of any of those permitted above can only be granted by issuance of a variance by the Zoning Board of Appeals.

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G. Any and all building expansions are subject to the requirements of site plan approval.

§ 144-77. Prohibited uses.

To ensure that certain undesirable uses are not allowed in the C-1 District, in the case that there is some indecision on a permitted use or to ensure that a special use permit is not granted, the following is a list of uses that are specifically prohibited within the C-1 District:

A. Principal.

- (1) Any use or structure with vehicle drive-through facilities.
- (2) Parking lots built to serve a use on another property.
- (3) Truck terminals, wholesale or retail distribution centers, and all automobile service stations, including gas stations.
- (4) Marine or other vehicle sales and service.
- (5) Tattoo or piercing parlors.
- (6) Self-storage facilities.
- (7) Outdoor storage.
- (8) Building equipment and contractor supply yards.
- (9) Warehouses or wholesale centers.
- (10) Any industrial or manufacturing use.
- (11) Junk or salvage yard.
- (12) Adult entertainment.

§ 144-78. Bulk requirements.

The minimum lot dimensions for permitted uses and structures in the C-1 District shall be as follows:

A. Minimum lot dimensions.

- (1) All lots shall have a minimum lot width of 100 feet as measure at the street right-of-way.
- (2) All lots shall have a minimum lot depth of 300 feet.
- (3) The minimum lot size shall be 30,000 square feet.

B. Maximum lot coverage. All buildings, structures, and impervious surfaces (parking areas, driveways, other paved surfaces) contained on a lot shall have a maximum combined lot coverage of 70%.

C. Maximum height. The height regulations herein shall supersede § 144-95, Building height, for structures in the C-1 District only and shall constitute the maximum height for any new structure in the C-1 District:

- (1) All principal structures: 35 feet to the peak and not to exceed two stories.
- (2) All accessory buildings: 18 feet to the peak and not to exceed one story.

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D. Required yards. The following table identifies the minimum setbacks required for new structures within the C-1 District. Refer to Article XVI, Multiple Dwellings, for required yards of multiple-family developments.

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Use	Yards			From an Abutting Residential Zoning District or an Abutting Existing Residential Use (regardless of zoning district) (Refer to § 144-79D(2) for additional standards)
	Front	Rear	Side	
Residential uses	50 feet	Principal uses: 10 feet	Principal uses: 10 feet on each side	No additional setbacks required
		Accessory uses: 10 feet	Accessory uses: 10 feet on each side	
All other uses	50 feet	Principal uses: 10 feet	Principal uses: 10 feet on each side	Principal uses: 30-foot rear setback abutting such and 20-foot setback on each side abutting such
		Accessory uses: 10 feet	Accessory uses: 10 feet on each side	Accessory uses: 20-foot rear setback abutting such and 10-foot setback on each side abutting such

§ 144-79. Design standards.

In addition to the general standards outlined in this section, all development within the C-1 District, with the exception of single- and two-family residential and agricultural structures, shall conform to the Town's design guidelines, where applicable (copy to be obtained from the Town).

A. Architecture; general design.

- (1) The architecture, design, and layout of the site is subject to review by the Planning Board and generally should retain and enhance the small-scale mixed residential and commercial character of the neighborhood and complement adjacent residential uses.
- (2) The applicant shall submit building plans and elevations showing how any proposed structure conforms to and enhances the character of the neighborhood and, if applicable, meets the specific requirements of any overlay district.
- (3) Buildings that are designed around a corporate image or franchise design are discouraged. The architecture and design of buildings shall take on a character unique to the Town of Elma.
- (4) Buildings intended for use by multiple tenants should be designed in such a way as to avoid the appearance of a long strip plaza and should contain features such as variations in scale and design and should incorporate breaks in the building that contain landscaped areas, gathering spaces, or architectural amenities.
- (5) Buildings developed within the C-1 District shall take on a design similar to a residential structure that would meet the neighborhood character intent.
- (6) All rooftop HVAC units, communications equipment, or other rooftop equipment shall be screened from view at ground level by use of building and/or roof features compatible with the design of the building.
- (7) In general, at least 35% of any side of a nonresidential building that faces the street shall consist of windows.

B. Site layout.

- (1) For lots that are developed with a single building, the building shall be oriented towards, and have a front entrance facing, the street on which the building fronts. When a building fronts more than one street, the building should be oriented towards, and have a front entrance facing, the street on which

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adjacent buildings with similar uses front.

- (2) Lots developed with multiple buildings or intended for multiple tenants shall be well planned to create interconnection and unity of the site and avoid the scattered, disconnect layout of buildings.
- (3) Pedestrian walkways shall be installed between principal buildings, or in the case of a multitenant building, between leasable entrances, on a single site and shall be constructed of concrete, decorative brick, or other material approved by the Planning Board.

C. Parking, driveway, and loading areas. In addition to the regulations defined in Article IV, Off-Street Parking, any parking and/or loading area within the C-1 District shall meet the following:

- (1) Parking and loading areas shall not be located within the street right-of-way and, where practicable, shall be set back from the street right-of-way a minimum of 10 feet.
- (2) Parking and loading areas shall not encroach upon any required side or rear setback.
- (3) Parking and loading areas shall be screened according to § 144-44E(3).
- (4) Driveways providing ingress and egress from parking and/or loading areas are subject to §§ 144-33 and 144-44E(4).

D. Landscaping/screening. Any permitted use developed within the C-1 District shall conform to the following:

- (1) Existing natural vegetation and trees shall be preserved to the greatest extent practicable. Other landscaping treatments such as trees and shrubbery shall be located as directed by the Planning Board through site plan review to achieve the desired character and conformance with the surrounding properties.
- (2) The required yard for any use abutting a Residential A, Residential B, or Residential C and Agricultural Zone, or any use abutting an existing residential use, shall be as identified in § 144-78D. Required yards shall consist of natural vegetation and undisturbed greenspace. If the Planning Board determines that the natural vegetation within the required yard does not provide a sufficient buffer, it may require additional screening by earthen berm, landscaping, masonry wall, fence, or other screening.
- (3) A minimum of 10% of the area devoted to the parking of 10 vehicles or more shall consist of landscaping, subject to the approval of the Planning Board.
- (4) The placement of landscaping is encouraged within islands and along the periphery of the parking areas, within the front and side yards, and around the building.
- (5) Trash containers, dumpsters, storage areas, and HVAC and mechanical equipment shall not be located within the required front, side, or rear setback and shall be screened from public view by fencing or continuous landscaping.

E. Signage. In addition to the regulations defined in § 144-102.1, Signs, any permitted use developed within a C-1 District shall conform to the following:

- (1) Signage shall be constructed of neutral materials and colors, be complementary to the building and site, and enhance the streetscape and neighborhood visual character.
- (2) Signs shall not be placed within the public right-of-way, unless approved by the Planning Board.
- (3) Signs shall not be placed in a way that restricts visibility or causes a traffic hazard.
- (4) Each building shall be permitted one building sign and one freestanding sign.
- (5) Individual building signs shall not be larger than 20 square feet.

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- (6) In the case of multitenant buildings, each tenant shall be permitted one building sign, affixed to the portion of the building in which they lease, of no larger than six square feet, that shall be counted towards the overall 20 square feet of building signage permitted for the building. Multitenant buildings are still restricted to one freestanding sign.
- (7) Building signage shall not be placed on the roof or above the roofline of a building, and shall not extend beyond the building, block windows, or obstruct other architectural elements.
- (8) Building signs shall be completely affixed to a building and shall not protrude from the building greater than six inches.
- (9) Freestanding signs shall not project higher than four feet above the existing grade and shall be constructed of an enclosed base with stone, brick, or other masonry or wood materials. The use of pylon or pole signs is not permitted. The use of landscaping to enhance the appearance of signage is encouraged.
- (10) Freestanding signs are limited to no more than 20 square feet of signage per side, and no more than 40 square feet of total signage.
- (11) The use of digital signage or flashing signage is not permitted.
- (12) Temporary signs, banners, or other promotional signage shall not be permitted to exist on the site for longer than seven days unless granted by the Planning Board.
- (13) No digital signs other than static images. **[Added 10-19-2011]**

F. Access management. The objective of access management is to reduce the number of conflict points and to ensure vehicular and pedestrian safety.

- (1) Shared access and cross access of adjacent lots is encouraged, subject to Planning Board review, to reduce the number of curb cuts and provide access control.
- (2) The location and number of access points are subject to the review and approval of the Planning Board, Town Engineer and, when appropriate, the Town Highway Superintendent.
- (3) Access driveways shall conform to §§ 144-33 and 144-44E(4).
- (4) Access management should reference the NYSDOT Best Practices in Arterial Management.

G. Other. Any permitted use developed within the C-1 District shall conform to the following additional provisions:

- (1) The placement of lighting on the site shall be subject to review of the Planning Board to ensure site lighting is directed away from adjacent properties.
- (2) Site lighting shall consist of cut-off, shielded, or directional lighting fixtures. The use of LED lighting is encouraged.
- (3) The intensity of light at the perimeter of the site shall not exceed 0.1 footcandle.

§ 144-80. Maintenance bond as condition of site plan approval.

The Planning Board will require, as a condition of site plan approval, that the applicant file a two-year maintenance bond, in such amount as determined by the Town Planning Board, to insure that the proposed development's required landscaping is maintained in compliance with approved plans. An estimate of the value of the landscaping will be required as part of the site plan approval so that an amount can be determined for the bond.

ARTICLE IX
Intermediate Commercial (C-2) District
[Added 10-1-2008 by L.L. No. 5-2008¹⁰⁴]

§ 144-81. Statement of intent.

The Intermediate Commercial (C-2) District is intended to provide a commercial zoning district that meets the community-wide needs for general retail and services. This district's regulations allow for the establishment of small to moderate commercial uses in structures generally consisting of a footprint of no larger than 7,000 square feet without becoming overly intrusive to surrounding areas. The district should enhance the overall image of the Town through aesthetics, site layout, access management, and residential buffering.

§ 144-82. Permit required.

- A. No person, firm, or corporation, not already using buildings for business purposes, shall use any existing buildings or lands for any use, other than for normal farming purposes, without first procuring a permit for such use from the Town Board of the Town of Elma, which said permit shall only be issued after a hearing before the Town Board. The Town Board may refuse any such permit after such hearing if it appears to violate the Zoning Ordinance or if said proposed business or industrial use constitutes a nuisance or will imperil the health and well-being of any of the citizens of the Town.
- B. If such use is proposed for a building to be erected, the Town Board, after hearing held before it, may grant a preliminary use permit for a use described in § 144-84, and thereafter the Building Inspector may issue a building permit for such building in the manner provided in the Elma Code. When the building is completed, a formal use permit, to be issued after application therefor and a hearing before said Town Board, shall be required before a certificate of occupancy is issued by the Building Inspector.

§ 144-83. Effect upon other zoning requirements.

Where the standards of the C-2 District conflict with other regulations of the Town of Elma Code, the more restrictive standards shall apply.

§ 144-84. Permitted uses.

The following is a list of uses that are permitted within the C-2 District. The maximum building footprint shall be 7,000 square feet, with the total area of the building not to exceed 10,000 square feet (two-story maximum).

- A. Principal.
 - (1) Any use permitted under the C-1 District.
 - (2) Residential on the upper floors of an approved commercial use, limited to two dwelling units. **[Amended 2-4-2015 by L.L. No. 1-2015]**
 - (3) Personal service establishments, including but not limited to beauty salons, barbershops, minor appliance/electronic repair, laundromats, and dry cleaners.
 - (4) Food, drug, and convenience stores.
 - (5) Retail sales.
 - (6) Nurseries and greenhouses.
 - (7) Art, dance, music, or photography studios.

104.Editor's Note: This local law also repealed former Art. IX, Restricted Commercial Zone, as amended.

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(8) Mortuary or funeral parlors.

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B. Accessory.

- (1) Uses and structures customarily incidental to permitted uses.
- (2) Private garages, barns, or sheds with a maximum size of 250 square feet. (Refer to § 144-17, Accessory buildings.)
- (3) Temporary food or agricultural stands. (Refer to § 144-14, Farm produce stands.)
- (4) Outside storage of a single commercial vehicle, provided it is stored on the property for which it serves, is not used as signage for the business when stored, and is not stored within the required front yard of a lot.

§ 144-85. Uses permitted by special use permit.

- A. Any new building with a total area greater than 10,000 square feet, but less than 14,000 square feet, shall require a special use permit. The maximum building footprint shall remain 7,000 square feet, with the total area of the building not to exceed 14,000 square feet (two-story maximum).
- B. Any new building with a building footprint greater than 7,000 square feet and up to 10,500 square feet (150% of the maximum allowed footprint), and with a total area square footage less than 21,000 square feet (two-story maximum), may be approved by special use permit by the Town Board. These oversized buildings in this district shall only be considered for a special use permit if they are located in the C-2 zoned areas on Seneca Street from Transit Road to Old Pound Road/Northrup Road.
- C. Custom shops, including cabinet making, carpentry, electrical and mechanical trades, plumbing, printing, shoe repair, tailoring, woodworking and the making of articles for sale only on the premises may be approved in the C-2 zoned areas on Seneca Street from Transit Road to Old Pound Road/Northrup Road by special use permit by the Town Board.
- D. For the purposes of considering uses that may not have been specifically listed as a permitted use nor prohibited within the C-2 District, but that warrant consideration because the Town feels that the use may comply with the intent of the C-2 District, the Town Board, following a public hearing, may issue a special use permit, subject to § 144-135, so long as the use is not first permitted in the C-3 or Industrial Zoning District.

§ 144-86. Expansion of existing buildings.

- A. The maximum building footprint size for a new building in the C-2 District is 7,000 square feet. Any existing building within the C-2 District (as of the date of the first adoption of the new C-2 District, October 1, 2008) may expand by up to 50% over its current size. These expansions, up to 10,500 square feet, are permitted as of right through site plan approval.
- B. Buildings that are currently less than 7,000 square feet (maximum building footprint for a new one-story building) may expand up to a total footprint size of 10,500 square feet (150% of the maximum building footprint) as of right through site plan approval.
- C. Multiple expansions to a building may occur, so long as the cumulative size of expansions does not exceed the maximum expansion that would have been permitted on the building at the time of adoption of the C-2 District.
- D. If this allowable expansion (up to 50%) results in a building over a footprint of 10,500 square feet (150% of the allowable building size), the expansion will require a special use permit (SUP) from the Elma Town Board.

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- E. As with new buildings, these permitted existing building expansions will also allow second stories.
- F. Building expansions in excess of any of those permitted above can only be granted by issuance of a variance by the Zoning Board of Appeals.
- G. Any and all building expansions are subject to the requirements of site plan approval.

§ 144-86.1. Prohibited uses.

To ensure that certain undesirable uses are not allowed in the C-2 District, in the case that there is some indecision on a permitted use, or to ensure that a special use permit is not granted, the following is a list of uses that are specifically prohibited within the C-2 District:

- A. Principal.
 - (1) Truck terminals and wholesale or retail distribution centers.
 - (2) Any industrial manufacturing use.
 - (3) Junk or salvage yards.
 - (4) Adult entertainment.
 - (5) Any outside storage of construction vehicles, building equipment, or building contractor supplies.

§ 144-86.2. Bulk requirements.

The minimum lot dimensions for permitted uses and structures in the C-2 District shall be as follows:

- A. Minimum lot dimensions.
 - (1) All lots shall have a minimum lot width of 100 feet as measured at the street right-of-way.
 - (2) All lots shall have a minimum lot depth of 300 feet.
 - (3) The minimum lot size shall be 30,000 square feet.
- B. Maximum lot coverage.
 - (1) All buildings, structures, and impervious surfaces (parking areas, driveways, and other paved surfaces) contained on a lot shall have a maximum total lot coverage of 75%.
- C. Maximum height. The height regulations herein shall supersede § 144-95, Building height, for structures in the C-2 District only and shall constitute the maximum height for any new structure in the C-2 District:
 - (1) All principal structures: 35 feet to the peak and not to exceed two stories.
 - (2) All accessory buildings: 18 feet to the peak and not to exceed one story.
- D. Required yards. The following table identifies the minimum setbacks required for new structures within the C-2 District. Refer to Article XVI, Multiple Dwellings, for required yards of multiple-family developments.

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Use	Yards			From an Abutting Residential Zoning District or an Abutting Existing Residential Use (regardless of zoning district) (Refer to § 144-86.3D(4) for additional standards)
	Front	Rear	Side	
Residential uses	50 feet	Principal uses: 10 feet	Principal uses: 10 feet on each side	No additional setbacks required
		Accessory uses: 10 feet	Accessory uses: 10 feet on each side	
All other uses	50 feet	Principal uses: 10 feet	Principal uses: 10 feet on each side	Principal uses: 30-foot rear setback abutting such and 20-foot setback on each side abutting such
		Accessory uses: 10 feet	Accessory uses: 10 feet on each side	Accessory uses: 20-foot rear setback abutting such and 10-foot setback on each side abutting such

§ 144-86.3. Design standards.

In addition to the general standards outlined in this section, all development within the C-2 District, with the exception of single- and two-family residential and agricultural structures, shall conform to the Town's Design Guidelines, where applicable (copy to be obtained from the Town).

A. Architecture; general design.

- (1) The architecture, design, and layout of the site is subject to review by the Planning Board and generally should promote the character of a community commercial node that is not overly intrusive to adjacent residential neighborhoods.
- (2) The applicant shall submit building plans and elevations showing how any proposed structure conforms to and enhances the character of the neighborhood and, if applicable, meets the specific requirements of any overlay district.
- (3) Buildings that are designed around a corporate image or franchise design are discouraged. The architecture and design of buildings shall take on a character unique to the Town of Elma.
- (4) Buildings intended for use by multiple tenants should be designed in such a way to avoid the appearance of a long strip plaza and should contain features such as variations in scale and design and should incorporate breaks in the building that contain landscaped areas, gathering spaces, or architectural amenities.
- (5) The side of a building that fronts a street shall not consist of a blank, monotonous wall that would not meet the neighborhood character intent. Strategies that could be applied to a building facade to improve its appearance include incorporating recesses and projections, alternating roof lines and pitches, varying building materials, colors, and/or designs, and street-level windows.
- (6) All rooftop HVAC units, communications equipment, or other rooftop equipment shall be screened from view at ground level by use of building and/or roof features compatible with the design of the building.
- (7) In general, at least 25% of any side of a nonresidential building that faces the street shall consist of windows.

B. Site layout.

- (1) For lots that are developed with a single building, the building shall be oriented towards, and have a front entrance facing, the street on which the building fronts. When a building fronts more than one street, the building should be oriented towards, and have a front entrance facing, the street on which

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adjacent buildings with similar uses front.

- (2) Lots developed with multiple buildings or intended for multiple tenants shall be well planned to create interconnection and unity of the site and avoid the scattered, disconnected layout of buildings.
- (3) Pedestrian walkways shall be installed between principal buildings, or in the case of a multitenant building, between leasable entrances, on a single site and shall be constructed of concrete, decorative brick, or other material approved by the Planning Board.

C. Parking, driveway, and loading areas. In addition to the regulations defined in Article IV, Off-Street Parking, any parking and/or loading area within a C-2 Zoning District shall meet the following:

- (1) All required parking, driveways, and loading ingress and egress areas shall be paved with blacktop, concrete, or other acceptable dust-free paving material.
- (2) Parking and loading areas must be set back from the street right-of-way a minimum of 10 feet and shall be set back from the rear and side property line a minimum of two feet, except in the case of shared access.
- (3) Parking and loading areas shall be screened according to § 144-44E(3).
- (4) Driveways providing ingress and egress from parking and/or loading areas are subject to §§ 144-33 and 144-44E(4).

D. Landscaping/screening. Any permitted use developed within the C-2 District shall conform to the following:

- (1) Existing natural vegetation and trees shall be preserved to the greatest extent practicable. Other landscaping treatments such as trees and shrubbery shall be located as directed by the Planning Board through site plan review to achieve the desired character and conformance with the surrounding properties.
- (2) A minimum of 10% of the area devoted to parking shall consist of landscaping, subject to the approval of the Planning Board.
- (3) The placement of landscaping is encouraged within islands and along the periphery of the parking areas, within the front and side yards, and around the building.
- (4) The required yard for any use abutting a Residential A, Residential B, or Residential C and Agricultural Zone, or any use abutting an existing residential use, shall be as identified in § 144-86.2D. Required yards shall consist of natural vegetation and undisturbed greenspace. If the Planning Board determines that the natural vegetation within the required yard does not provide a sufficient buffer, it may require additional screening by earthen berm, landscaping, masonry wall, fence, or other screening.
- (5) Trash containers, dumpsters, storage areas, and HVAC and mechanical equipment shall not be located within the required front, side, or rear setback and shall be screened from public view by fencing or continuous landscaping.

E. Signage. Signage shall conform to the regulations defined in § 144-102.1, Signs.

- (1) No digital signs other than static images. **[Added 10-19-2011]**

F. Access management. The objective of access management is to reduce the number of conflict points and to ensure vehicular and pedestrian safety.

- (1) Shared access and cross access of adjacent lots is encouraged, subject to Planning Board review, to reduce the number of curb cuts and provide access control.
- (2) The location and number of access points are subject to the review and approval of the Planning Board,

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Town Engineer and, when appropriate, the Town Highway Superintendent.

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- (3) Access driveways shall conform to §§ 144-33 and 144-44E(4).
- (4) Access management should reference the NYSDOT Best Practices in Arterial Management.

G. Other. Any permitted use developed within the C-2 District shall conform to the following additional provisions:

- (1) The placement of lighting on the site shall be subject to review of the Planning Board to ensure site lighting is directed away from adjacent properties and does not produce night glow. The use of LED lighting is encouraged.
- (2) Site lighting shall consist of cut-off, shielded, or directional lighting fixtures. The use of LED lighting is encouraged.
- (3) The intensity of light at the perimeter of the site shall not exceed 0.1 footcandle.

§ 144-86.4. Maintenance bond as condition of site plan approval.

The Planning Board will require, as a condition of site plan approval, that the applicant file a two-year maintenance bond, in such amount as determined by the Town Planning Board, to insure that the proposed development's required landscaping is maintained in compliance with approved plans. An estimate of the value of the landscaping will be required as part of the site plan approval so that an amount can be determined for the bond.

ARTICLE IXA
Major Commercial (C-3) District
[Added 10-1-2008 by L.L. No. 5-2008]

§ 144-86.5. Statement of intent.

The Major Commercial (C-3) District is intended to provide a commercial zoning district for larger, commercial uses along major transportation corridors. The district should enhance the overall image of the Town and create destinations through aesthetics, site layout, access management, and residential buffering.

§ 144-86.6. Permit required.

- A. No person, firm, or corporation, not already using buildings for business purposes, shall use any existing buildings or lands for any use, other than for normal farming purposes, without first procuring a permit for such use from the Town Board of the Town of Elma, which said permit shall only be issued after a hearing before the Town Board. The Town Board may refuse any such permit after such hearing if it appears to violate the Zoning Ordinance or if said proposed business or industrial use constitutes a nuisance or will imperil the health and well-being of any of the citizens of the Town.
- B. If such use is proposed for a building to be erected, the Town Board, after hearing held before it, may grant a preliminary use permit for a use described in § 144-86.8, and thereafter the Building Inspector may issue a building permit for such building in the manner provided in the Elma Code. When the building is completed, a formal use permit, to be issued after application therefor and a hearing before said Town Board, shall be required before a certificate of occupancy is issued by the Building Inspector.

§ 144-86.7. Effect upon other zoning requirements.

Where the standards of the C-3 District conflict with other regulations of the Town of Elma Code, the more restrictive standards shall apply.

§ 144-86.8. Permitted uses.

The following is a list of uses that are permitted within the C-3 District. The maximum total area of a building shall be 20,000 square feet. Any building greater than 20,000 square feet shall require a special use permit.

- A. Principal.
 - (1) Any use permitted under the C-2 District, except for single-family residential and two-family residential.
 - (2) Residential on the upper floors of an approved commercial use, limited to two dwelling units.
[Amended 2-4-2015 by L.L. No. 1-2015]
 - (3) Stores for retail merchandising and customary services incident to retail sales.
 - (4) Assembly halls or auditoriums.
 - (5) Hotels/motels.
 - (6) Commercial entertainment and recreational establishments, such as theaters and bowling alleys, when conducted only indoors and when lights and sound are controlled so as to prevent a nuisance.
 - (7) Dry-cleaning pickup stations, dry-cleaning plants using nonflammable fluids in self-contained, solvent-reclaiming units, hand laundries.
 - (8) Automobile service stations, including gas stations and public garages:

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- (a) Approval of the Planning Board after a public hearing is required for the issuance of a permit for the erection or enlargement of a public garage, automobile service station, or gas station or for the conversion of any premises to be used for such purposes listed above in any permitted zone, if any part of the lot or plot in question is situated within a radius of 200 feet of, or within any portion of, a road between intersecting roads that are not 600 feet or more apart, in which portion there exists a church, a public hospital or a hospital maintained as a charitable institution, a public library, a public school, a duly organized school giving regular instructions at least five days a week for eight or more months a year, a community house, a playground or other public recreation area, or a theater containing 300 seats or more.
- (b) Gasoline pumps or other service appliances shall be set back at least 20 feet from any road line. Driveways shall have an unobstructed width of at least 10 feet and shall not exceed a width of 25 feet where they intersect the road line and shall not be nearer than 10 feet to a side line. No major repair work connected with the operation of a public garage or automobile service station shall be carried on outside the building, and no part of any such building shall be used for residence or sleeping quarters. Commercial storage of gasoline or other petroleum fuel for wholesaling is prohibited. All state and county regulations shall apply.
- (c) Volatile materials, except as provided in Subsection A(8)(d), shall be stored underground only and in quantities not exceeding 12,000 gallons; tank trucks containing volatile materials may be parked on premises only while attended by the driver. A tank trailer containing volatile materials shall not be disengaged from a tractor on the premises. Any transfer for volatile materials from one underground tank to another shall be in underground piping buried at least 18 inches below grade.
- (d) Propane (LP gas) must be stored aboveground in tanks or containers meeting standards contained in New York State rules and regulations and enclosed by an adequate fence or barrier approved by the Building Inspector.
- (9) Marine and recreational vehicle sales and service.
- (10) Building equipment and contractor supply yards.
- (11) Custom shops, including cabinet making, carpentry, electrical and mechanical trades, plumbing, printing, shoe repair, tailoring, woodworking and the making of articles for sale only on the premises.
- (12) Warehousing and wholesale centers.
- (13) Passenger depots or terminals.

B. Accessory.

- (1) Uses and structures customarily incidental to permitted uses with a maximum size of 350 square feet. (Refer to § 144-17, Accessory buildings.)

§ 144-86.9. Uses permitted by special use permit.

Any building with a total area greater than 20,000 square feet shall require a special use permit. Additionally, for the purposes of considering uses that may not have been specifically listed as a permitted use nor prohibited within the C-3 District, but that warrant consideration because the Town feels that the use may comply with the intent of the C-3 District, the Town Board, following a public hearing, may issue a special use permit, subject to § 144-135, so long as the use is not permitted in the Industrial Zoning District, in which a special use permit shall not be granted.

§ 144-86.10. Expansion of existing buildings.

- A. The maximum building footprint size for a new building in the C-3 District is 20,000 square feet. Any existing

§ 144-86.10 building within the C-3 District (as of the date of the first adoption of the new C-3 District, October 1, 2008) may expand by up to 50% over its current size. These expansions, up to 30,000 square feet, are permitted as of right through site plan approval. § 144-86.12

- B. Buildings that are currently less than 20,000 square feet (maximum building footprint for a new one-story building) may expand up to a total footprint size of 30,000 square feet (150% of the maximum building footprint) as of right through site plan approval.
- C. Multiple expansions to a building may occur, so long as the cumulative size of expansions does not exceed the maximum expansion that would have been permitted on the building at the time of adoption of the C-3 District.
- D. If this allowable expansion (up to 50%) results in a building over a footprint of 30,000 square feet (150% of the allowable building size), the expansion will require a special use permit (SUP) from the Elma Town Board.
- E. As with new buildings, these permitted existing building expansions will also allow second stories.
- F. Building expansions in excess of all those permitted above can only be granted by issuance of a variance by the Zoning Board of Appeals.
- G. Any and all building expansions are subject to the requirements of site plan approval.

§ 144-86.11. Prohibited uses.

To ensure that certain undesirable uses are not allowed in the C-3 District, in the case that there is some indecision on a permitted use, and to ensure that a special use permit is not granted, the following is a list of uses that are specifically prohibited within the C-3 District:

- A. Principal.
 - (1) Single-family residential.
 - (2) Two-family residential.
 - (3) Truck terminals and wholesale or retail distribution centers.
 - (4) Any industrial or manufacturing use.
 - (5) Junk or salvage yard.
 - (6) Adult entertainment.

§ 144-86.12. Bulk requirements.

The minimum lot dimensions for permitted uses and structures in the C-3 District shall be as follows:

- A. Minimum lot dimensions.
 - (1) All lots shall have a minimum lot width of 100 feet as measured at the street right-of-way.
 - (2) All lots shall have a minimum lot depth of 300 feet.
 - (3) The minimum lot size shall be 30,000 square feet.
- B. Maximum lot coverage. All buildings, structures, and impervious services contained on a lot shall have a maximum total lot coverage of 75%.

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C. Maximum height. The height regulations herein shall supersede § 144-95, Building height, for structures in the C-3 District only and shall constitute the maximum height for any new structure in the C-3 District. § 144-86.13

- (1) All principal structures: 45 feet.
- (2) All accessory buildings: 18 feet and not to exceed one story.

D. Required yards. The following table identifies the minimum setbacks required for new structures within the C-3 District.

Use	Yards			From an Abutting Residential Zoning District or an Abutting Existing Residential Use (regardless of zoning district) (Refer to § 144-86.13D(5) for additional standards.)
	Front	Rear	Side	
All permitted uses	50 feet	Principal uses: 10 feet	Principal uses: 10 feet on each side	Principal uses: 40-foot rear setback abutting such and 20-foot setback on each side abutting such
		Accessory uses: 10 feet		
				Accessory uses: 20-foot rear setback abutting such and 10-foot setback on each side abutting such

§ 144-86.13. Design standards.

In addition to the general standards outlined in this section, all development within the C-3 District, with the exception of agricultural structures, shall conform to the Town's Design Guidelines, where applicable (copy to be obtained from the Town).

A. Architecture; general design.

- (1) The architecture, design, and layout of the site is subject to review by the Planning Board and generally should promote a mix of small- and large-scale commercial uses to be developed into an attractive regional destination without becoming a typical suburban commercial strip. The site should provide sufficient buffering from adjacent residential uses and incorporate access control provisions.
- (2) The applicant shall submit building plans and elevations showing how any proposed structure conforms to and enhances the character of the neighborhood and, if applicable, meets the specific requirements of any overlay district.
- (3) Buildings that are designed around a corporate image or franchise design are discouraged. The architecture and design of buildings shall take on a character unique to the Town of Elma.
- (4) Buildings intended for use by multiple tenants should be designed in such a way to avoid the appearance of a long strip plaza and should contain features such as variations in scale and design and should incorporate breaks in the building that contain landscaped areas, gathering spaces, or architectural amenities.
- (5) The side of a building that fronts a street shall not consist of a blank, monotonous wall that would not meet the neighborhood character intent. Strategies that could be applied to a building facade to improve its appearance include incorporating recesses and projections, alternating roof lines and pitches, varying building materials, colors, and/or designs, and street-level windows.
- (6) All rooftop HVAC units, communications equipment, or other rooftop equipment shall be screened from view at ground level by use of building and/or roof features compatible with the design of the building.
- (7) In general, at least 25% of any nonresidential building that faces the street shall consist of windows.

B. Site layout.

- § 144-86.13 § 144-86.13
- (1) Lots developed with multiple buildings or intended for multiple tenants shall be well planned to create interconnection and unity of the site and avoid the scattered, disconnect layout of buildings.
 - (2) Pedestrian walkways shall be installed between principal buildings, or in the case of a multitenant building, between leasable entrances, on a single site and shall be constructed of concrete, decorative brick, or other material approved by the Planning Board.
- C. Parking, driveway, and loading areas. In addition to the regulations defined in Article IV, Off-Street Parking, any parking area within the C-3 District shall conform to the following:
- (1) All required parking, driveways, and loading ingress and egress areas shall be paved with blacktop, concrete, or other acceptable dust-free paving material.
 - (2) Parking and loading areas must be set back from the street right-of-way a minimum of 10 feet and shall be set back from the rear and side property line a minimum of two feet, except in the case of shared access.
 - (3) Parking and loading areas shall be screened according to § 144-44E(3).
 - (4) Driveways providing ingress and egress from parking and/or loading areas are subject to §§ 144-33 and 144-44E(4).
 - (5) Parking areas shall contain pedestrian walkways throughout the parking area to provide safe circulation of pedestrians between the parking area and entrance to a building. Pedestrian walkways shall consist minimally of a striped walkway. Preferably, pedestrian walkways should be constructed of concrete or raised or stamped concrete to clearly indicate a pedestrian facility.
- D. Landscaping/screening. Any permitted use developed within the C-3 District shall conform to the following:
- (1) Existing natural vegetation and trees shall be preserved to the greatest extent practicable. Other landscaping treatments such as trees and shrubbery shall be located as directed by the Planning Board through site plan review to achieve the desired character and conformance with the surrounding properties.
 - (2) A minimum of 15% of the area devoted to parking shall consist of landscaping, subject to the approval of the Planning Board.
 - (3) The placement of landscaping is encouraged within islands and along the periphery of the parking areas, within the front and side yards, and around the building.
 - (4) For every 30 feet of road frontage, a street tree shall be planted in accordance with New York State Department of Transportation standards.
 - (5) The required yard for any permitted use abutting a Residential A, Residential B, or Residential C and Agricultural District, or any permitted use abutting an existing residential use, shall be screened as identified in § 144-86.12D. Required yards shall consist of natural vegetation and undisturbed green space. If the Planning Board determines that the natural vegetation within the required yard does not provide a sufficient buffer, it may require additional screening by earthen berm, landscaping, masonry wall, fence, other screening method, or additional setbacks.
 - (6) Trash containers, dumpsters, storage areas, and HVAC and mechanical equipment shall not be located within the required front, side, or rear setback and shall be screened from public view by fencing or continuous landscaping.
- E. Signage.¹⁰⁵ **[Amended 6-15-2022]**

105.Editor's Note: See Attachment A, C-3 Transit Road LED Message Board District, which is included as an attachment to this chapter.
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§ 144-86.14

- (1) No digital signs other than static images. **[Added 10-19-2011]**

F. Access management. The objective of access management is to reduce the number of conflict points and to ensure vehicular and pedestrian safety.

- (1) Shared access and cross access of adjacent lots is encouraged, subject to Planning Board review, to reduce the number of curb cuts and provide access control.
- (2) The location and number of access points are subject to the review and approval of the Planning Board, Town Engineer and, when appropriate, the Town Highway Superintendent.
- (3) Access driveways shall conform to §§ 144-33 and 144-44E(4).
- (4) Access management should reference the NYSDOT Best Practices in Arterial Management.

G. Other. Any permitted use developed within the C-3 District shall conform to the following additional provisions:

- (1) The placement of lighting on the site shall be subject to review of the Planning Board to ensure site lighting is directed away from adjacent properties and does not produce night glow. The use of LED lighting is encouraged.
- (2) Site lighting shall consist of cut-off, shielded, or directional lighting fixtures. The use of LED lighting is encouraged.
- (3) The intensity of light at the perimeter of the site shall not exceed 0.1 footcandle.

§ 144-86.14. Maintenance bond as condition of site plan approval.

The Planning Board will require, as a condition of site plan approval, that the applicant file a two-year maintenance bond, in such amount as determined by the Town Planning Board, to insure that the proposed development's required landscaping is maintained in compliance with approved plans. An estimate of the value of the landscaping will be required as part of the site plan approval so that an amount can be determined for the bond.

ARTICLE X
Industrial Zone
[Amended 6-3-1981; 3-3-1982; 11-2-1994]

§ 144-87. Permit required.

No person, firm or corporation not already using buildings for business purposes shall use any existing buildings or lands nor erect any new building for any of the following uses without first procuring a preliminary business use permit for such use from the Town Board of the Town of Elma, which said permit shall only be issued after a hearing before the Town Board. The Town Board shall refer the applicant to the Planning Board for site plan review under Chapter 117 of the Code. The Planning Board will make a report and forward its recommendation to the Town Board regarding the issuance of the preliminary business use permit. Final approval of a preliminary business use permit will only be given by the Town Board after all necessary agency reviews and any necessary permits are obtained. The Town Board may refuse any such permit after such hearing if it appears to violate the Zoning Ordinance or if said proposed business or industrial use which constitutes a nuisance will imperil the health and well-being of the citizens of the Town.

§ 144-88. Purpose; intent.

This district is intended to provide areas within the Town for a planned light industrial district for the location of light manufacturing and related production facilities as well as office, research and service establishments, designed to ensure compatibility between industrial operations and the existing character and quality of the community. More specifically, such district is established with the intent of locating compatible industries in an organized manner so as to ensure the efficient development of the industrial use on sufficient land and compatibility with adjacent districts while encouraging the development of a balanced employment mix within the Town and to improve the tax base thereof. The planning of such elements as streets, parking, architectural features and landscaping shall take into consideration aesthetic appeal and the promotion of an openness and parklike character in keeping with the Town's rural nature and heritage.

§ 144-89. Prohibited and permitted uses.

A. Permitted uses; list of uses conforming to standards; utility permits.

(1) The following uses shall be permitted:

- (a) Manufacturing or processing operations as well as office, research and service establishments of an unobjectionable nature so conducted that no noise, light or glare, smoke, odor, dust, dirt, noxious gas, industrial waste, vibration, fire hazard, traffic hazard or congestion occurs to an unreasonable extent outside the premises devoted to such operations as a result of such operations. Uses and structures permitted include the following:

[1] Principal uses and structures:

- [a] Research and development activities, including laboratories, testing, small-scale experimental and pilot plant operations and production operations incidental to research and development practice and techniques.
- [b] The manufacture, compounding and assembly of products from previously prepared materials, including:
 - [i] Electrical and electronic components and equipment.
 - [ii] Musical, scientific, medical, dental and photographic equipment and supplies.
 - [iii] Pharmaceutical products, cosmetics and toiletries.

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[iv] Recreation equipment and toys.

[v] Clothing and other textile products.

[vi] Printing, publishing and engraving.

[vii] Furniture and furnishings for households and offices and related wood and metal products.

[viii] Food and beverage products.

[c] Warehousing and wholesale distribution when conducted within a completely enclosed building.

[d] The following uses by special use permit authorized by the Planning Board:

[i] Satellite dish antenna.

[ii] Nursery schools and day-care centers.

[2] Accessory uses and structures:

[a] Accessory uses and structures customarily incidental to permitted principal uses.

[b] Truck dispatch and transfer incidental to permitted principal use, provided that no vehicle loading, unloading or parking shall be permitted in a public right-of-way.

(2) Utility permits. Permits are required for all utility structures and shall be considered upon written application, including survey and plans, to the Town Board following the procedures contained in this article.

(3) After public hearing and recommendations by the Planning Board, the Town Board shall by resolution establish and from time to time revise a list of uses conforming to the foregoing standards, including any conditions to which any such use shall be subject in order to assure such conformity.

B. No uses permitted in Residential A, B or C and Agricultural Zones shall be permitted in the Industrial Zone.

C. The following and similar and/or like nature uses shall be prohibited uses:

Acetylene gas manufacture for commercial purposes

Ammonia, chlorine or bleaching powder manufacture

Any industry or use which, when conducted under proper and adequate conditions and safeguards, is currently liable to create corrosive, toxic, noxious fumes, gas, smoke, substances or odors or obnoxious dust or vapor or offensive noise or vibration, except that such may be permitted by the Town Board as hereinafter provided in this section, provided that it is a necessary minor and incidental accessory to a conforming use

Blast furnaces, rolling mills, smelter or boiler works

Carbon, lampblack, graphite or stove polish manufacture

Celluloid manufacture or storage

Coke ovens

Creosote manufacture or treatment

Dead animal, offal, garbage or sewage reduction or treatment or storage except where permitted and/or controlled by the Town

Distillation of coal, wood or bones

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Dyestuff manufacturing

Emery cloth and sandpaper manufacture

Fertilizer manufacture

Garbage, feeding for hogs

Garbage, trash and refuse dumps, incinerators and sanitary landfill operations unless operated by the Town of Elma

Gas manufacturing or storage, except not in excess of 10,000 cubic feet of illuminating or heating as when used within the Town limits

Glue, size or gelatin manufacture

Gunpowder, fireworks or other explosives manufacturing or storage

Iron, steel, aluminum, brass or copper foundries

Junk businesses, automobile wrecking and old car storage yards

Lime, cement, gypsum or plaster of paris manufacturing

Match manufacturing or storage of bulk

Milling or processing of flour

Oilcloth and linoleum manufacture

Operation of waste transfer, disposal or other recycling facilities shall not be permitted unless operated by the Town. This section does not preclude the collection of materials which are to be transported to other facilities

Ore reduction, refining or the smelting of iron, copper, tin, zinc, lead or other metal or metal ores.

Paint, oil, varnish, turpentine, shellac or enamel manufacture.

The permanent or temporary occupancy for any purpose of any trailer or mobile home parked in any district except:

- (1) Office trailers may be used as temporary office space in an Industrial Zone upon approval by the Town Board, provided that:
 - (a) The use of the trailer is permitted in this chapter.
 - (b) A plan is submitted showing the location of any permanent buildings, driveways or physical characteristics of the land or site at which the trailer is to be located.
 - (c) The trailer has no water or sanitation facilities connected to it.
 - (d) The trailer shall be occupied for a period not to exceed one year, subject to review and renewal by the Town Board.
 - (e) The owner of the trailer shall pay a fee as may be established or amended from time to time by resolution of the Town Board.

Plastic manufacturing

Printing ink manufacture

Production from raw, crude or scrap materials of cement, asphalt, starch and the by-products of coal, coke, petroleum and natural gas

Rubber or gutta-percha manufacture from crude or scrap materials; rubber reclaiming or processing

Soap, tallow, grease or lard manufacturing or rendering

Stockyards

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Sulphurous, sulfuric, nitric or hydrochloric acid manufacture

Tanning, curing or storage of raw hides or skins

Tar distillation and tar roofing manufacture, asphalt manufacture

Those uses which have been or may be declared a nuisance in any court of record and/or those (nuisances) uses which are noxious, offensive or hazardous by reason of the emission of odor, stench, vibration, dust, fumes, smoke, gas, particulate emission, glare, noise, lights or the generation of traffic of a greater nature than that which is normal or customary to the area and which is unreasonable under the circumstances and/or which use matter, smoke or any waterborne or airborne waste

Wood, pulp and fiber reduction and/or processing.

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§ 144-90. District regulations.

In Industrial Districts, all structures and uses shall be subject to certain regulations, including minimum lot sizes and setbacks as are required to provide a site adequate for the principal and accessory buildings, all required off-street parking, loading and stacking, landscaping, yards and open spaces as recommended and determined by the site plan review by the Planning Board and as approved by the Town Board, and:

- A. Percentage of lot coverage. All structures, including accessory structures, shall be adequate and must be recommended by the site plan review process by the Planning Board, but in no event cover more than 40% of the area of the lot except by special permit of the Town Board.
- B. Minimum setback requirements are as follows:
 - (1) Each lot shall have a front setback of 50 feet, side and rear setbacks of 20 feet, with 100 feet if abutting a residential zone.
- C. Building and structure requirements are as follows:
 - (1) Principal and accessory buildings:
 - (a) Maximum height: 40 feet.
- D. Buffer and landscaping requirements are as follows:
 - (1) A buffer of not less than 100 feet in width shall be reserved where an Industrial Zone borders a residential zone unless the proposed use is a commercial one. Such a zone shall be landscaped and maintained by the owner.
 - (2) All original front, side and rear yards shall be landscaped with a combination of trees, ground cover and shrubbery to provide effective screening of the premises from outside of the premises and/or to present an attractive appearance from the street.
 - (3) All wire, feed lines and energy sources shall be placed underground. The Town Board may waive this requirement at the request of the applicant in cases where the Board shall determine that installation or installation services will result in a difficulty or hardship. In making such decision, the Board will consider unusual topography and/or other conditions which prevent this requirement from being practical.
 - (4) The location, size and construction of signs shall be in keeping with the character of the area and as recommended by the Planning Board.
 - (5) All open storage of equipment and materials, including machinery, unlicensed vehicles, building materials, scrap and other and/or similar materials shall be effectively screened by a wall, fence, planting or combinations of each so that such storage will not be readily visible from a public way or residential

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zone at lot level insofar as reasonably practicable.

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- (6) Landscaping shall be maintained, and all required landscaping as shown on the approved landscape plan shall be preserved.

§ 144-91. Purpose and applicability of industrial performance standards.

- A. Intent. The intent of industrial performance standards is to assure the health, safety and welfare of the residents of the Town of Elma by:
 - (1) Publishing standards with which industrial uses are compelled to conform; and
 - (2) Establishing a district which provides for industrial activity necessary to the economic base of the Town.
- B. The purpose of this section is to allow uses not specified or excluded as set forth hereinbefore or hereinafter when, after proper consideration, the Town Board determines that a special business use permit authorizing the same may be issued. If, after a consideration of all the interests of the community and the Town as a whole, including but not limited to the nature of the proposed use, its effect on adjacent lands, its proximity to other uses and use districts and its compliance with the performance standards set forth hereafter, the Town Board determines that a business use permit authorizing such proposed use is proper, the same may be issued.
- C. Review. Review of the effects of industry on its environment is preferable during the planning stage in order to avoid remedial action after a facility is constructed and in operation.
- D. General application.
 - (1) The industrial performance standards contained herein shall be minimum standards to be met and maintained by all industrial uses established after the effective date of this article. All existing uses which do not comply with these performance standards may continue to operate but must not become more nonconforming. All additions, expansions or changes in process shall conform to the applicable performance standards.
 - (2) Although these industrial performance standards relate more directly to industrial uses, it is understood that no nonindustrial use, in any district, shall exceed these performance standards.

§ 144-92. Performance standards.

- A. Limitations on uses in the Industrial Zone:
 - (1) No use of land, building or structure shall be permitted, the operation of which normally results in any:
 - (a) Fire or explosive hazard.
 - (b) Dissemination of atmospheric pollutant in excess of federal clean air standards, noise or odor into any R or C District.
 - (c) Vibrations registered beyond the property line.
 - (2) No unneutralized refuse material shall be discharged into sewers, streams or ditches.
 - (3) Storage of flammable liquids shall be entirely underground and in storage tanks to conform with the New York State Uniform Fire Prevention and Building Code.
 - (4) Safety containers shall be used within any building or structure in which flammable liquids and/or hazardous chemicals are handled.
 - (5) Glare. Illumination from industrial operations and activities can be disturbing to the area and neighboring zones. No lighting or signs which create glare which could impair the vision of a driver of

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any motor vehicle shall be permitted.

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(a) Any operations, activity or use shall be conducted so that direct or indirect illumination from the source of light shall not cause unreasonable illumination in any residential zone and limited illumination in any commercial zone.

(b) Installation of shields may be required to eliminate glare across residential or commercial lot lines.

§ 144-93. Site plan review; enforcement; compliance.

A. Application. Data to be provided by the applicant for the site plan review shall include but is not limited to:

- (1) Plans of the proposed construction, including site plan review procedures.
- (2) A description of the proposed machinery, processes and products and an MSDS list of chemicals, including quantities and location(s) for use or storage in building(s) and/or on grounds.
- (3) Specifications for mechanisms and techniques proposed in restricting possible emission of any dangerous or objectionable elements set forth above.
- (4) Measurements of the amount or rate of emission of said dangerous or objectionable elements.

B. Review.

- (1) The procedure shall follow the site plan procedure as per the site plan review process under Chapter 117 and the procedures specifically noted herein.

C. Continued enforcement.

- (1) The Building and Zoning Enforcement Officers shall investigate any purported violation of this chapter and, upon reasonable grounds for the same, shall notify the Town Board of the occurrence or existence of a probable violation thereof. The Town Board shall investigate the alleged violation and, for such investigation, may employ qualified experts as it deems necessary or desirable. If it is found that a violation occurred or exists, a copy of said findings shall be forwarded to the offender, who shall, in turn, be given a reasonable length of time to bring the violation into compliance.
- (2) The services of any qualified experts employed by the Town to advise in establishing a violation shall be paid by the violator if said violation is established otherwise by the Town.

D. Compliance required; abandonment or discontinuance of permit; revocation of permit.

- (1) The use of the premises in question shall at all times comply with the determination of the Town Board, the business use permit, the detailed site and development plan, the request of the applicant for the business use permit and all other documents, evidence and data submitted to the Town and Planning Boards based upon which the determination and permit were made and issued.
- (2) The business use permit shall be deemed abandoned in the event that the use permitted thereby is discontinued for a period of six months or more. The preliminary business use permit shall also be deemed discontinued if the construction of the premises permitted by the preliminary business use permit is not commenced within two years from the date of issuance thereof or if construction or alteration of the premises as authorized under this article is not completed within a period of two years from the issuance of the building permit. An extension of time may be granted by the Town Board upon good reason.
- (3) The business use permit may be revoked by the Town Board after a public hearing for a business's refusal to correct any violation of any of the provisions of the laws, ordinances, rules and regulations applicable thereto. So long as the business use permit is in use, the Building Inspector or duly authorized

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agent shall have the right to inspect the premises on reasonable advance notice, and the holder of said permit and the owner and occupant of the premises for which the business use permit shall have been issued shall answer any and all reasonable questions and provide any information reasonably requested in connection with such use. In the event of a failure to allow such inspection, a failure to answer such questions or a failure to provide such information, the Town Board shall have the right to revoke said business use permit.

E. Compliance by nonresidential existing uses.

- (1) Any operating nonresidential existing use may continue to operate as it did prior to the adoption of this article for a period of three years, provided that within said period, any nonresidential nonconforming existing use shall submit a plan to conform as may be applicable and appropriate to the provisions of this article respecting landscape requirements and performance standards, including a time frame for its implementation to the Planning Board, which shall make a recommendation to the Town Board. The Town Board shall approve, disapprove or modify the plan and set an implementation schedule for compliance in accordance with any approved plan. An extension of time to implement the plan may, upon good reasons therefor, be granted by the Town Board. If a plan is not submitted within three years of the date of the adoption of this article and implemented as provided hereinabove, any nonresidential nonconforming use shall be unlawful and shall be terminated and cease to operate. Existing uses shall not be required to meet the provisions set forth in this article with respect to setback and/or density or similar-type requirements for its existing operation. However, any additional expansion of uses or structures will only be allowed subject to approval of the Town Board.

ARTICLE XA
Elma Center Overlay
[Added 10-1-2008 by L.L. No. 5-2008]

§ 144-93.1. Statement of intent.

In accordance with the Regional Comprehensive Plan, the Elma Center Overlay is established to employ standards that improve the quality of development for the Elma Center hamlet area that result in the reuse and enhancement of existing structures, improvement in the overall visual quality of the area, and promote the creation of a unique, pedestrian-friendly district that focuses on the historic foundations of the Town of Elma. The image of the Elma Center area should reflect that of the older, more stately homes along Bowen Road north of Bullis Road.

§ 144-93.2. Boundaries.

The boundaries of the Elma Center Overlay are as follows:

Beginning at a point along the center line of Bullis Road, 300 feet west of the center line of Bowen Road, the Overlay boundary runs parallel to Bowen Road at a distance of 300 feet from the center line of Bowen Road south to the parcel that contains the Town of Elma Highway Department garage. The boundary then runs east to the center line of Bowen Road, then runs south to the center line of Woodard Road. The boundary then follows the center line of Woodard Road east 100 feet, then runs northeast along a parcel line to a distance 300 feet east of the center line of Bowen Road. The boundary then runs parallel to Bowen Road, at a distance of 300 feet from the center line of Bowen Road, north to the Pond Brook Homes parcel. The boundary then runs west to the center line of Bowen Road, then runs north along the center line of Bowen Road to the center line of Bullis Road. The boundary then runs west along the center line of Bullis Road to meet up with the starting point, 300 feet west of the center line of Bowen Road.

§ 144-93.3. Effect upon other zoning requirements.

The standards of the Elma Center Overlay shall be superimposed over, and supplement, the underlying zoning standards. Each use must conform to the standards of the underlying zoning district, as well as the standards of this overlay district, and the more stringent standards shall apply.

§ 144-93.4. Permit required.

- A. No person, firm, or corporation, not already using buildings for business purposes, shall use any existing buildings or lands for any use, other than for normal farming purposes, without first procuring a permit for such use from the Town Board of the Town of Elma, which said permit shall only be issued after a hearing before the Town Board. The Town Board may refuse any such permit after such hearing if it appears to violate the Zoning Ordinance or if said proposed business or industrial use constitutes a nuisance or will imperil the health and well-being of any of the citizens of the Town.
- B. If such use is proposed for a building to be erected, the Town Board, after hearing held before it, may grant a preliminary use permit for a use described in § 144-93.6, and thereafter the Building Inspector may issue a building permit for such building in the manner provided in the Elma Code. When the building is completed, a formal use permit, to be issued after application therefor and a hearing before said Town Board, shall be required before a certificate of occupancy is issued by the Building Inspector.

§ 144-93.5. Objectives.

The standards contained herein, which govern all development and redevelopment within the boundaries of the Elma Center Overlay, are founded upon the following objectives:

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- A. Establish criteria that promote the creation of a unique district consisting of a character that complements the older, stately homes in the area.
- B. Promote the reuse and enhancement of existing structures.
- C. Improve the overall visual quality of the Elma Center hamlet area.
- D. Promote a streetscape that is pedestrian-friendly and safe by promoting small-scale buildings, encouraging buildings to orient and locate close to the street, eliminating front yard parking, and restricting the number of vehicle access points.
- E. Establish standards to ensure that new development or redevelopment is in character in terms of scale, design, use, and layout with the historic, pedestrian-scaled character envisioned for the hamlet.
- F. Access management practices should be employed to limit vehicular-pedestrian conflict points and to improve vehicle safety and traffic flow.
- G. Establish standards that allow for a harmonious mix of uses.
- H. Reduce signage clutter by controlling the number and size of signs, the placement of signs, and the appearance of signage. Signage should be designed to complement the architecture of the building and promote the character of the Elma Center hamlet area.
- I. Landscaping and other amenities should be incorporated into site development to enhance the site and screen parking areas.

§ 144-93.6. Permitted uses.

The uses that are permitted within the Elma Center Overlay shall be determined by the underlying zoning district.

§ 144-93.7. Prohibited uses.

To ensure that certain undesirable uses are not allowed in the Elma Center Overlay, in case that there is some indecision on a permitted use, or to ensure that a special use permit is not granted, the following is a list of uses that are specifically prohibited within the Elma Center Overlay:

- A. Principal.
- (1) Any establishment with vehicle drive-through facilities.
 - (2) Tattoo or piercing parlors.
 - (3) All automobile sale/service stations, including gas stations.
 - (4) Marine or other vehicle sales and service.
 - (5) Truck terminals and wholesale or retail distribution centers.
 - (6) Self-storage facilities.
 - (7) Outdoor storage.
 - (8) Commercial car washes.
 - (9) Building equipment and contractor supply yards.
 - (10) Warehouses or wholesale centers.
 - (11) Any industrial or manufacturing use.

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 (12) Telecommunications facilities.
 (13) Junk or salvage yards.
 (14) Adult entertainment.

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§ 144-93.8. Submission requirements.

- A. The applicant shall meet all submission requirements of site plan review.
- B. The applicant shall submit building plans and elevations indicating the facade treatments and construction materials and colors of all structures in compliance with the standards of the underlying zoning district and Elma Center Overlay.
- C. The applicant shall submit a minimum of two different renderings of the proposed structure(s) to be developed on the site to allow the Planning Board to choose the alternative that it feels will best comply with the overlay.
- D. The applicant shall submit a site plan that identifies all components of the development and indicates compliance with all the requirements of the Zoning Law and the Elma Center Overlay.
- E. The applicant shall submit a landscape plan identifying the location, type, size, and planting specifications of all landscaping proposed for the site. The landscape plan shall also identify, in general, existing vegetation on the site.
- F. The applicant shall submit a signage plan that shows the size, type, placement, lighting, design, and construction materials of each sign proposed for the site comply with all the requirements of the Zoning Law and the Elma Center Overlay.

§ 144-93.9. Design standards.

In addition to the general standards outlined in this section, all development within the Elma Center Overlay, with the exception of agricultural, single-family residential, and two-family residential structures, shall conform to the Town's Design Guidelines, where applicable (copy to be obtained from the Town).

- A. Minimum lot dimensions. To encourage small-scale, pedestrian-oriented activity within the hamlet area, the Planning Board may reduce the required lot width to 50 feet where public sewers exist.
- B. Building setbacks.
 - (1) The following setbacks shall supersede the setbacks of the underlying zoning and apply to all development within the Elma Center Overlay to promote the hamlet streetscape and to encourage pedestrian activity and safety. Where a setback is not established, the underlying setback shall be applied.
 - (2) To encourage a visually appealing and pedestrian-friendly streetscape, the front building setback shall be no less than five feet and no more than 10 feet as measured from the street right-of-way. Arcades, awnings, balconies, porches, and other architectural amenities shall be permitted to encroach upon the front setback by a maximum of five feet as long as it does not encroach upon the right-of-way.
- C. Architecture. The architecture and design of any structure within the Elma Center Overlay shall comply with the standards of the underlying zoning and shall conform to the following general guidelines.
 - (1) General design.
 - (a) The architecture and design of any structure shall:

- [1] Comply with the character envisioned for the Elma Center hamlet area that complements the

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older, more stately homes found along Bowen Road, north of Bullis Road;

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- [2] Enhance the visual quality of the Elma Center hamlet area;
- [3] Be harmonious with adjacent uses;
- [4] Be pedestrian-oriented and promote pedestrian safety; and
- [5] Comply with the Town's Design Guidelines, where applicable.

(b) The reuse or redevelopment of an existing structure shall be considerate of the original character of the structure. Any additions to an existing building shall conform to the requirements of the Elma Center Overlay.

(2) Building materials.

- (a) Any side of a building that faces a street or public right-of-way shall incorporate a facade constructed of any of the following materials: stone, brick, masonry, marble, wood or vinyl siding, or other material approved by the Planning Board.
- (b) The use of cast concrete, cinder blocks, or metal paneling shall not be used on sides of a building that face a street or public right-of-way.

D. Site layout. The site layout within the Elma Center Overlay shall comply with the standards of the underlying zoning and conform to the following general guidelines. In the case of conflicting standards, the regulations of the Overlay District shall prevail.

- (1) All new developments within the Elma Center Overlay shall install a sidewalk within the right-of-way and parallel to Bowen Road, in accordance with the county and Town standards, where applicable. The sidewalk shall measure no less than five feet in width and be placed at least seven feet from the pavement edge along the entire frontage of the lot to allow for pedestrian circulation.
- (2) The building and site should incorporate design features that make it compatible and safe for both vehicular and pedestrian access and circulation.

E. Parking and loading areas. Off-street parking shall comply with the standards of the underlying zoning and Article IV of the Zoning Code, and shall conform to the following additional standards:

- (1) Parking and loading areas must be set back from the street right-of-way a minimum of 20 feet.
- (2) To reduce the impact of parking areas on the hamlet area, the Planning Board may reduce the required number of parking spaces if it determines that the presence of pedestrian traffic or nearby shared parking warrants less on-site parking.
- (3) A minimum of 10% of the interior of a parking area designed for 20 cars or more shall be devoted to landscaping used to break up the parking stalls where the parking area is visible from the public right-of-way.
- (4) A minimum of 20% of the interior of a parking area designed for 50 cars or more shall be devoted to landscaping where the parking area is visible from the public right-of-way.
- (5) Parking areas shall not contain a continuous single row of parking stalls of greater than 10 parking spaces without interruption by a landscaped island where the parking area is visible from the public right-of-way.
- (6) In addition to the screening of a parking area required in § 144-44E(3), the use of decorative ornamental features, masonry walls, fencing, or a mix of each is encouraged to additionally screen parking and loading areas and to create a more visually appealing streetscape.

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- (7) Pedestrian walkways shall be incorporated throughout a parking area to provide safe circulation of pedestrians between the parking area and entrance to a building. Pedestrian walkways shall consist minimally of a striped walkway. Preferably, pedestrian walkways should be constructed of concrete or raised or stamped concrete to clearly indicate a pedestrian facility.

F. Landscaping/Screening. Landscaping and screening shall comply with the standards of the underlying zoning and shall conform to the following additional standards:

- (1) For every 25 feet of road frontage, a street tree shall be planted between the sidewalk and the edge of pavement, in conformance with county and Town standards, where applicable.
- (2) Additional shade trees shall be planted throughout the site of any non-single-family or two-family residence and nonagricultural use at a ratio of one tree per 10,000 square feet of lot area.
- (3) The required front yard shall consist of vegetative ground cover, perennial and annual landscaped areas, and/or other amenities that enhance the visual appearance and pedestrian-friendliness of the streetscape. The use of hanging baskets and other decorative planters is encouraged.
- (4) All landscaped areas shall be maintained, and any vegetation that dies shall be replaced during the following planting season.

G. Signage. Signage shall comply with the standards of the underlying zoning and § 144-102.1, Signs, and shall conform to the following additional standards:

- (1) Proposed signage shall be designed to complement the architecture of the building and comply with the historic, pedestrian-friendly character envisioned for the Elma Center hamlet area.
- (2) Each building shall be permitted one building sign.
- (3) Individual building signs shall not be larger than 20 square feet.
- (4) In the case of multitenant buildings, each tenant shall be permitted one building sign of no more than six square feet that shall be counted towards the overall 20 square feet of total signage permitted for the building.
- (5) Building signs shall be completely affixed to a building and shall not protrude from the building more than six inches. An exception may be granted by the Planning Board for a building sign that protrudes from a building by a supporting arm or other ornamental feature of no more than five feet so long as the sign is perpendicular to the building facade and sidewalk and does not obstruct views, cause a safety hazard, or negatively impact the character envisioned for the Elma Center hamlet area.
- (6) Any sign that protrudes over a sidewalk shall have a minimum clearance of 10 feet between the sidewalk and lowest part of the sign.
- (7) Freestanding signs are not permitted.
- (8) The use of digital signage or flashing signs is not permitted.
- (9) Overall signage may not be lit from internal lights, only the use of individually internally lit characters on a sign, backlit signage, or directional lighting shall be used to light signage. The use of flashing or neon lights is not permitted.
- (10) The appearance and placement of signage shall be subject to Planning Board discretion as part of the site plan review process.

H. Access management.

- (1) The objective of access management is to reduce the number of conflict points and to ensure pedestrian

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friendliness and safety.

- (2) The number of curb cuts and width of access drives for parking and/or loading areas shall be the minimum possible, as determined by the Planning Board, to maintain a pedestrian-friendly streetscape.

I. Other.

- (1) The use of decorative lighting structures is encouraged to comply with the historic, pedestrian-friendly character envisioned for the hamlet.
- (2) The maximum height of any lighting structures shall be 16 feet.
- (3) Fencing placed in the front yard shall be no higher than three feet and shall consist of wood or faux wood picket or ornamental iron construction. A mix of stone, brick, or other masonry wall and fencing may be permitted. The use of stockade, metal, woven wire, or barbed wire fences is not permitted in the front yard.
- (4) Outdoor seating. Eating and drinking establishments located in the Elma Center Overlay may conduct their business along the sidewalk or within a public right-of-way, provided:
 - (a) The storage of goods, whether temporary or permanent, shall not be permitted outside of the building and/or structure.
 - (b) The maximum outdoor seating area shall be no larger than 100 square feet and shall not extend further than 10 feet from the building in which the business is located.
 - (c) At least five feet of the sidewalk shall remain free of such eating area and associated structures to allow for the safe and efficient movement of pedestrians.
 - (d) The outdoor seating area shall be a temporary area, and shall not contain any permanent buildings and/or structures.

ARTICLE XI
Height, Bulk and Arrangement of Buildings

§ 144-94. Dimensions to be construed as minimum. [Added 6-3-1981]

All dimensions in §§ 144-97C, 144-98C, 144-99C, 144-100B and 144-101B shall be construed to be minimum dimensions.

§ 144-95. Building height.

The height of buildings shall be limited to a distance not to exceed 50% of its yard or setback from its appropriate front lot line.

§ 144-96. Corner lots.

For regulations pertaining to corner lot requirements, see § 144-132.

§ 144-97. Residential A Zone.

The following requirements shall apply in the Residential A Zone:

- A. Floor space. The minimum livable floor space in the residence ground floor shall not be less than 1,200 square feet.
- B. The maximum size of the main building shall not exceed 15% of the lot area.
- C. Lot size. [Amended 6-21-1989]
 - (1) Minimum frontage: 125 feet.
 - (2) Depth: 300 feet.
 - (3) Minimum lot area: 37,500 square feet.
 - (4) Minimum setback from road line: 50 feet; side line: 20 feet; rear line: 10 feet.

§ 144-98. Residential B Zone.

The following requirements shall apply in the Residential B Zone:

- A. Floor space. The minimum livable floor space in the residence ground floor shall not be less than 1,000 square feet for one family or one 1,000 square feet ground floor area and total living floor space of 1,800 square feet for a two-family residence.
- B. The maximum size of the main building shall not occupy more than 15% of the lot area.
- C. Lot size. [Amended 6-21-1989]
 - (1) Minimum frontage: 125 feet.
 - (2) Depth: 250 feet.
 - (3) Minimum lot area: 35,000 square feet.
 - (4) Minimum setback from road line: 50 feet; side line: 20 feet; rear line: 10 feet.

§ 144-99. Residential C and Agricultural Zone.

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A. Floor space. Minimum livable floor space in a residence for one family: 720 square feet ground floor; two-family residence: 800 square feet ground floor and a total of not less than 1,200 square feet. § 144-101

B. The maximum size of the main building shall not occupy more than 15% of the lot area.

C. Lot size.

(1) Minimum frontage: 100 feet. [Amended 6-21-1989]

(2) Depth: 250 feet. [Amended 6-21-1989]

(3) Minimum lot area: 32,000 square feet. [Amended 6-21-1989]

(4) Minimum setback from road line: 50 feet; side line: 20 feet; rear line: 10 feet. [Amended 6-21-1989]

(5) Building housing animals, front setback from road line: 75 feet minimum; side line: 25 feet; rear line: 25 feet.

(6) Other accessory buildings, minimum setback from road line: 75 feet; side line: 10 feet; rear line: 10 feet, except for exceptions allowed for farm produce stands. (See §§ 144-14 and 144-70.)

(7) All currently approved nonsubdivision building lots that meet current zoning regulations for size and setback will continue to be approved building lots requiring only a side line setback of 10 feet; all new lots will require 20 feet of side line setbacks. [Added 6-21-1989]

§ 144-100. Commercial Zone.

The following requirements shall apply in the Commercial Zone:

A. Floor space. Minimum livable floor space in a residence must comply with the Residential C and Agricultural Zone requirements. (See § 144-99A and B.)

B. Lot size.

(1) Minimum frontage: 100 feet.

(2) Depth: 300 feet.

(3) Minimum lot area: 30,000 square feet.

(4) Minimum setback from road line: 50 feet; side line: 10 feet; rear line: 10 feet.

C. Construction of over 20,000 square feet. Whenever new or additional construction of commercial property exceeds 20,000 square feet, including all detached buildings, a permit shall be required from the Town Board. The provisions of §§ 144-87 and 144-93, dealing with industrial zoning and construction, including permit requirements and procedural approvals, shall apply to such commercial construction in an effort to protect the environment, the Town, the health, safety and general welfare its residents and their way of life. [Added 5-3-1995]

§ 144-101. Restricted Commercial Zone.

The following requirements shall apply in the Restricted Commercial Zone:

A. Floor space. No livable floor space for a residence shall be permitted. Plans and survey shall be submitted to the Town Board.

B. Lot size.

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- (1) Minimum frontage: 100 feet.
- (2) Depth: 300 feet.
- (3) Minimum lot area: 30,000 square feet.
- (4) Minimum setback from road line: 50 feet; side line: 10 feet; rear line: 10 feet.

§ 144-102. Industrial Zone.

The following requirements shall apply in the Industrial Zone:

- A. Floor space. Plans and topographical survey shall be submitted to the Town Board.
- B. Lot size. Plans and topographical survey shall be submitted to the Town Board.

§ 144-102.1. Signs. [Added 5-18-1994]

- A. No flashing signs are permitted in any zone.
- B. The following signs shall be permitted in the Commercial and Industrial Zones unless such use is specifically changed or restricted by the Industrial Zone code provisions.
 - (1) No sign shall be erected until a sign permit is obtained from the Building Inspector. The Building Inspector is authorized to issue a sign permit upon compliance with the following:
 - (a) The applicant must make application, in writing, which application shall contain a scale drawing of the proposed sign.
 - (b) Flashings signs are prohibited. Illuminated signs are permissible, but the hours of illumination shall be specified in the permit and restricted accordingly. Three dimensional signs, objects or advertising require a special motion of approval by the Planning Board. **[Amended 10-19-2011]**
 - (c) The sign may advertise only the business conducted on the premises.
 - (d) The total area of signs affixed to buildings shall not exceed 10% of the face of the building to which affixed.
 - (e) On any lot there shall be allowed one freestanding sign which shall have an area (in square feet) not to exceed 1/100 of the factor obtained by multiplying the number of linear feet of street frontage of the lot on which the sign is to be placed by the number of linear feet in distance, measured at right angles, from the street line to the nearest point at which the sign is to be placed. The maximum size shall be 100 square feet.
 - (f) No sign shall be located within 10 feet of a lot in an adjacent residential zone.
 - (g) No sign within 100 feet of a residential zone boundary shall have a surface area (in square feet) larger than its distance in linear feet from such residential zone boundary.
 - (h) No part of a sign shall be more than 20 feet above the adjoining grade level of the ground.
 - (i) Nonilluminated signs not exceeding a total area of 36 square feet shall be permitted, advertising only the prospective sale or rental of the premises on which located.
 - (j) No sign shall project across a lot line.
 - (k) The use of spotlights must be so as not to impede the vision of motorists and/or pedestrians.

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C. Temporary and seasonal signs. Permits are required for any sign. All sign application permits shall require the payment of a fee before the same will be issued. Only one permit per tax parcel will be permitted at any particular time.

(1) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

SEASONAL — A sign which is dependent on a particular season of the year and which is not permanent for a business which operates temporarily or seasonally and not year round.

TEMPORARY — A sign which is permitted for a limited time period only for a business which operates on a permanent basis.

D. Temporary sign permits shall not exceed a thirty-day period and shall be issued for the promotion of a permanent business in a Commercial or Industrial Zone only. Said sign shall be removed from public view at the expiration of the permit period. The Building Inspector shall permit only one temporary sign per year per business. The fee shall be as required for the particular sign and as may be established from time to time by resolution of the Town Board.

E. Seasonal sign permits shall be issued for a minimum of 30 days and a maximum of six months for a seasonal business.

(1) The seasonal sign permit shall not exceed the period of the seasonal operation of the business use permit and that the sign shall be removed from public view at the expiration of the permit.

(2) Fees. A permit shall only be granted upon payment of a monthly fee for each month that the sign permit is requested and issued for as may be set from time to time by resolution of the Town Board.

F. In an Industrial or Commercial Zone, internal lighting may be allowed, and a portable lit sign may be allowed. The maximum size allowed is four by eight feet. In a residential zone, external lighting only is allowed. The maximum size allowed is three by four feet.

G. Intent. Sign regulations, including provisions to control the type, design, size, location, motion, illumination and maintenance thereof, are designed to achieve the following purposes: **[Added 10-19-2011]**

(1) To protect property values, create a more attractive economic and business climate and protect the physical appearance of the community from the effects of inharmonious, bizarre and out-of-scale signs.

(2) To preserve the scenic and natural beauty of designated areas and provide a more enjoyable and scenic community.

(3) To reduce signs or advertising distractions or obstructions that may contribute to traffic accidents.

(4) To provide reasonable, yet appropriate, conditions for advertising goods sold or services rendered in business districts by relating the size, type and design of signs to the type of establishment.

(5) To control signs so that their appearance will be aesthetically harmonious with the overall design of the area.

(6) To reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way.

(7) To curb the deterioration of natural beauty in the community's environment.

H. Definitions. As used in this section, the following terms shall have the meanings indicated: **[Added 10-19-2011]**

DIGITAL SIGNS — Revolving, moving, flashing, blinking, scrolling, fading, dissolving signs or signs that appear to be in motion. Digital signs may break with light suddenly and briefly. Digital signs may move very quickly.

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- I. Prohibited signs. The following signs are prohibited in the Town of Elma: **[Added 10-19-2011]**
- (1) Projecting signs over any public way except when hung from the underside or ceiling of a covered walkway related to the exterior of an individual business establishment.
 - (2) Any and all revolving, any and all moving, any and all flashing, any and all blinking, any and all scrolling, any and all fading, any and all dissolving signs or any and all signs that appear to be in motion.
 - (3) Fluttering banners or strings of lights not part of a sign; provided, however, that nothing herein shall be construed to prohibit the decoration of any premises for any national holiday or religious or holiday season.
 - (4) Signs attached to light standards, utility poles or trees.
 - (5) Portable, seasonal, temporary or freestanding signs are not allowed except by application to the Building Inspector, approval by the Planning Board if required by Code, issuance of a sign permit by the Building Inspector and payment of required fee.
 - (6) Roof signs.
 - (7) Billboards except that the Town may establish off-premises identification for signs for businesses.
 - (8) Digital signs.
 - (9) Intermittent signs.
- J. See Attachment B, All Other Areas LED Message Board District.¹⁰⁶ **[Added 6-15-2022¹⁰⁷]**
- K. Maintenance of signs. All signs and sign structures shall be maintained in good repair and condition. Signs and their supporting structures, which no longer serve the purpose for which they were intended or which have been abandoned or are not maintained in accordance with this section and other applicable regulations of the Town, shall be removed by the owner, lessee or user thereof, the permit holder or owner, or lessee or user of the premises upon which the sign is located. **[Added 10-19-2011]**
- L. Nonconforming signs. **[Added 10-19-2011]**
- (1) Signs, including billboards, conforming to the regulations prevailing prior to the effective date of this amendment, but which do not conform with the regulations herein or subsequent amendments thereto, shall be nonconforming signs. Any sign or part thereof which has blown down, been destroyed, needs to be changed due to a change in business or otherwise taken down for any purpose other than repair, shall not be rebuilt, reerected or relocated unless it complies with the provisions of this section and other applicable regulations.
 - (2) Where signs individually or collectively in a multiple development, as hereinafter defined, are nonconforming, one or more new wall and canopy/fascia signs complying with the current provisions may be erected whenever the use or occupancy changes of an individual establishment or enterprise.

106.Editor's Note: Attachment B is included as an attachment to this chapter.

107.Editor's Note: This ordinance also redesignated former Subsections J and K as Subsections K and L, respectively.

ARTICLE XII
Zoning Board of Appeals

§ 144-103. Organization. [Amended 6-3-1981]

There is hereby established a Zoning Board of Appeals to consist of five members to be appointed by the Town Board, with or without pay, as the Town Board may direct or provide. The Town Board shall also designate the Chairman of such Zoning Board of Appeals. Such Zoning Board of Appeals shall have power to appoint a Secretary to perform clerical and secretarial duties to the Board of Appeals.

§ 144-104. Terms of office.

Of the members of the Board first appointed, one shall hold office for the term of one year, one for two years, one for three years, one for four and one for five years from and after his appointment. Their successors shall be appointed for the terms of five years and from and after the expiration of the terms of their predecessors in office.

§ 144-105. Vacancies.

If a vacancy shall occur otherwise than by expiration of terms, it shall be filled by the Town Board by appointment for the unexpired term.

§ 144-106. Removal from office.

The Town Board shall have the power to remove any member of the Zoning Board of Appeals for cause and after a public hearing.

§ 144-107. Meetings.

All meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as such Board may determine and shall be open to the public.

§ 144-108. Chairman.

The Chairman or, in his absence, the Acting Chairman shall preside at all meetings of the Zoning Board of Appeals and may administer oaths and compel the attendance of witnesses.

§ 144-109. Recordkeeping; filing of regulations and decisions.

- A. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations or other official actions.
- B. Every rule, regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the Zoning Board of Appeals shall immediately be filed in the office of the Town Clerk and shall be a public record.

§ 144-110. Quorum.

Three members of the Board shall constitute a quorum for the transaction of business, and the concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Enforcement Officer or to decide in favor of an applicant in any matter upon which it is required to pass under this chapter, except as otherwise specifically provided.

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§ 144-111. Powers and duties.

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Enforcement Officer or any other officer, board or department of the Town. It shall also interpret any provision of this chapter and hear and decide all matters referred to it or upon which it is required to pass under this chapter.

§ 144-112. Variances.

Except where specific power is retained by and invested in the Town Board by this chapter, the Zoning Board of Appeals, after due notice and public hearing, may, in specific cases and subject to appropriate conditions and safeguards, determine and vary the application of the regulations herein established in harmony with their general purposes and intent as follows:

- A. Grant a permit whenever it is provided in this chapter that the approval of the Zoning Board of Appeals is required.
- B. Grant, in appropriate cases, conditional permits for new nonconforming uses or for the continuance or extension of existing nonconforming uses; such permit to be nontransferable and to terminate within the time permitted or such time as the licensee continues the occupancy or the use for which the permit is granted.
- C. Grant, in appropriate cases, where the property of the applicant lies across the boundary of two zones, a conditional permit for the extension of a lawful conforming use permitted in the less restricted zone into the more restricted zone for a distance not exceeding 75 feet, measured at right angles from such a zone boundary.
- D. Grant, in appropriate cases, conditional permits for boarding- or rooming houses.

§ 144-113. Appeals; fee. [Amended 3-7-1979]

Appeals may be taken to the Zoning Board of Appeals from any order, requirement, decision or determination, decision or determination of the Zoning Enforcement Officer by a person aggrieved or by any officer, department, board or bureau of the Town. Such appeal shall be taken within such time as shall be prescribed by the Zoning Board of Appeals by general rule by filing with the Zoning Enforcement Officer and with the Zoning Board of Appeals a notice of appeal specifying the grounds thereof. The Zoning Enforcement Officer shall forthwith transmit to the Zoning Board of Appeals all of the papers constituting the record upon which the action appealed from was taken. A fee, in an amount to be fixed by resolution of the Town Board from time to time, shall be paid to the Town Clerk at the time of application for an appeal to the Zoning Board of Appeals, and this fee shall be for each appeal made. The signature of the property owner must appear on all applications.

§ 144-114. Stay of proceedings.

An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer certifies to the Zoning Board of Appeals, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the Zoning Enforcement Officer from whose action the appeal is taken and on due cause shown.

§ 144-115. Notice of public hearing; grounds for denial of appeal.

- A. The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeals or other matter referred to it and give due and public notice thereof by publication in the official paper of the Town of a notice of such public hearing, at least five days prior to the date thereof, and shall, at least five days before such public hearing, mail notices thereof to the parties and shall decide such appeal or matter within 60 days after the final hearing. [Amended 6-3-1981]

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B. Failure on the part of the appellant to furnish information requested in writing by the Zoning Board of Appeals prior to the hearing shall constitute sufficient grounds for an automatic denial of the appeal.

C. Upon such public hearing, any party may appear in person, by agent or by attorney.

§ 144-116. Decisions by Board.

The Zoning Board of Appeals may make its decision in the manner provided by law, and any person or persons jointly or severally aggrieved by a decision of the Zoning Board of Appeals may thereafter apply for a certiorari order as provided by law.

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ARTICLE XIII
Amendments

§ 144-117. Rezoning of area.

The regulations, restrictions and boundaries herein provided may be from time to time amended, supplemented, changed, modified or repealed in a manner provided by statute, and, if any area is transferred from one zone to another zone of more restricted use, any nonconforming use then existing within said areas may be continued.

§ 144-118. Petition for change.

- A. Whenever 25% or more owners of property in any zone or the owners of 50 parcels of property in any zone, whichever number shall be less, shall present their signed petition to the Town Board requesting any amendment, supplement, alteration or change or repeal of the regulations prescribed for such zone or specified part thereof, it shall be the duty of the Town Board, after public notice and hearing upon such petition, to decide by a majority vote upon such request within 60 days after its filing with the Town Clerk. The provisions of the Town Law respecting such amendment, supplement, alteration, change or repeal with respect to the number of votes required by the Town Board to effect such amendment, supplement, alteration, change or repeal shall apply to this section and to any amendment of this Zoning Ordinance.
- B. Referral to Planning Board. Each proposed amendment, except those initiated by the Town Planning Board, shall be referred to the Town Planning Board for an advisory report prior to the public hearing held by the Town Board. In reporting, the Town Planning Board shall fully state its reasons for recommending or opposing the adoption of such proposed amendment and, if it shall recommend adoption, shall describe any changes in conditions which it believes make the amendment desirable and shall state whether such amendment is in harmony with a Comprehensive Plan for land use in the Town.
- C. Provisional amendment.
 - (1) In the case of a proposed amendment which involves the reclassification of an area to a less restricted zone, the Town Board shall require the petitioner to submit a development plan showing the extent, location and character of proposed structures and uses. The Town Board shall refer such proposed development plan to the Planning Board for its recommendation and may require that such plan be modified to ensure its compatibility to adjacent areas and may qualify its approval of such amendment by attaching a special endorsement thereto. Such endorsement may require that any future additions to the development plan area be resubmitted to the Town Board to determine that the addition is substantially in agreement with the intent of the original ordinance amendment. General conformity in architectural design with the original development may be considered a reasonable basis for refusal to issue a building permit for such an addition.
 - (2) No building permit shall be issued for construction within the area described by said amendment except in accordance with the approved development plan and with all conditions and limitations placed thereon by the Town Board or in accordance with the zoning regulations applicable prior to the said reclassification action. Unless application for a building permit for such special development is made within a period of one year after the Town Board's approval, said approval shall be void and the zoning classification shall be as it was when the petition for amendment was filed.

ARTICLE XIV
Administration and Enforcement

§ 144-119. Interpretation.

In interpreting and applying the provisions of this chapter, it shall be held to be the minimum requirement adopted for the promotion of the public health, safety, morals, comfort, convenience or general welfare. It is not intended by this chapter to repeal, abrogate, annul or in any way to impair or interfere with any existing provision of law or ordinances, including, among others, the provisions of any building code, planning or platting law, real property law, sanitary code or health department regulations or any other law, ordinance or regulations affecting the construction or use of buildings and premises, or with any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to law relating to the use of buildings or premises; provided, however, that in the case of a greater restriction upon the areas of land or sizes of lots upon which buildings or other structures may be erected or upon the use of buildings or premises or upon the height of buildings or requirements for larger yards, courts or other open spaces than are imposed or required by such existing provisions of law or ordinance or by any other rules, regulations or permits adopted or issued at any time, the provisions of this chapter shall control but subject always to the continuing rights as to lawful existing buildings and uses as set down under § 144-10, pertaining to nonconforming uses.

§ 144-120. Enforcement.

- A. Appointment of Enforcement Officer. The Town Board of the Town of Elma shall appoint a Zoning Enforcement Officer or Officers, whose duty it shall be to enforce the provisions of this chapter. Such Zoning Enforcement Officer may not be a member of the Town Board or of the Zoning Board of Appeals.
- B. Powers and duties.
 - (1) It shall be the duty of the Zoning Enforcement Officer or Officers to keep a record of all applications for permits and a record of all special conditions involved. Such Officers shall file and keep copies of all plans submitted, and the same shall form a part of the records of such office.
 - (2) The Zoning Enforcement Officer or Officers shall issue no permit unless it conforms to the requirements of this code. The Zoning Enforcement Officer may be the same person as the Town Building Inspector.
 - (3) It shall be the duty of the Enforcement Officer to condemn and start legal proceedings of condemnation and penalties, as provided by the law, wherever the regulations and intent of the Zoning Ordinance are circumvented or violated. **[Amended 6-3-1981]**
 - (4) The Enforcement Officer shall be required to report, in writing, on the status of each outstanding building application for which no use and occupancy permit has been issued, and such report shall be made at the December meeting of the Town Board. Such report must furnish the date of building permit issuance, number of permit, name of applicant, address of proposed building and other pertinent information, including the reasons why no use and occupancy permit is issued and a statement of whether the building is occupied.

§ 144-121. Compensation of Zoning Enforcement Officer and Clerk.

The compensation of the Zoning Enforcement Officer and Clerk, referred to in this section, shall be fixed by the Town Board within the amounts provided in the annual budget and paid at such time as determined by the Town Board.

§ 144-122. Power to grant certificates of occupancy and compliance.

The duties of administering and enforcing the provisions of this chapter shall be performed by the Zoning Enforcement Officer of the Town of Elma who shall have, subject to approval of the Town Board, power to

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grant certificates of occupancy and compliance. Any order, requirement, decision or determination made by him in reference thereto, after approval by the Town Board, shall be subject to review by the Zoning Board of Appeals and the courts. § 144-124

§ 144-123. Inspections.

The Zoning Enforcement Officer shall inspect or cause to be inspected, within 10 days after application, every site, building or structure constructed, altered or used, subject to the requirements of this chapter, and order, in writing, the remedying of any conditions found in violation of the requirements of this chapter.

§ 144-124. Penalties for offenses; notice.

- A. Any person, firm, association or corporation charged with violating any provision of this chapter shall be notified, in writing, to be served upon the same personally or by registered or certified mail, return receipt requested. Where such service cannot be made with due diligence, then the notice may be served by affixing said notice to the door of the main building on said property and by mailing the notice to such person at his or her last known residence, such affixing and mailing to be effected within 20 days of each other. Proof of such service shall be filed with the Clerk of the Town Board within 20 days of either such affixing or mailing, whichever is effected later; service shall be complete 10 days after such filing. Any person, firm, association or corporation refusing or neglecting to abate said violation within five days after written notice shall have been served upon him shall, for each and every violation and each and every day such violation continues beyond such five-day period of grace, be guilty of an offense punishable by a fine not exceeding \$250 or imprisonment for a period not to exceed 15 days, or both. Each week's continued violation thereafter shall constitute a separate additional violation. **[Amended 6-3-1981; 10-19-1983; 3-16-1994]**
- B. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained or any building, structure or land is used in violation of this chapter or any other ordinance or regulation made by the Town pursuant to law, the Town may by direction of the Town Board, in addition to other remedies provided, institute appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent and enjoin the occupancy of said building, structure or land and to prevent and enjoin any illegal act, conduct, business or use in or about such premises.

ARTICLE XV
Permits and Certificates

§ 144-125. Building permits.

- A. Before any person, persons or corporations shall erect, construct, alter or commence to erect, construct or alter any building or structure within the Town of Elma, the person, persons or corporations intending or desiring to erect, construct or alter shall first apply for and obtain from the Building Inspector a permit and shall pay for said permit, as prescribed in the Building Code,¹⁰⁸ except as set forth under § 144-65 covering customary agricultural purposes. All applications for building permits shall be in writing and shall contain the following information duly sworn to by the owner of record of the real estate or his agent for which such permit is sought, on forms furnished by the Town, as provided under the Building Code of the Town of Elma, as amended from time to time and shall state:
- (1) The nature of the permit sought and definite purposes with the nature of the building or proposed building.
 - (2) The size and location of the property and building.
 - (3) A description of deed restrictions, if any.
 - (4) An agreement to comply with the terms of the permit, the laws of the State of New York, the Town ordinances, the rules and regulations of the County and Town Health Department and all rules and regulations of the various departments of the Town and State of New York, to preserve the established building line, to give full information to the Building Inspector and not to use or permit to be used the structure or structures covered by the permit until sanitary facilities are completely furnished.
 - (5) Such other information as the Building Inspector or Zoning Enforcement Officer, the Zoning Board of Appeals or the Town Board may require, except as set forth under § 144-65, relating to farm buildings.
- B. Before a building permit is issued, driveway culvert shall be installed, the building staked out and a copy of a certified survey submitted with the application for a building permit.

§ 144-126. Expiration of building permits.

All building permits issued for any construction upon which work shall not have been substantially completed will automatically expire and become void after one year from the date of issue.

§ 144-127. Certificates of occupancy.

Where permits are issued and a building constructed, a certificate of occupancy will be issued without charge by the Zoning Enforcement Officer, provided that the use of the building so constructed agrees with the permit, and further provided that all requirements of the Erie County Health Department have been complied with. A certificate of occupancy must be withheld if sanitation requirements are not met in accordance with the purposes and intent of such requirements. A certificate of occupancy is required before a new building may be occupied and for continued occupancy of a remodeled building.

§ 144-128. Approval required for change in use.

Where a permit is acquired for the erection of a building for one purpose and it is to be used for a different purpose after it is constructed, approval must be obtained from the Town Board which will direct the Zoning Enforcement Officer as to issuance or rejection of the certificate of occupancy.

108. Editor's Note: See Ch. 52, Building Construction.

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§ 144-129. Street frontage requirements.

No building permit shall be issued on any lot that does not have the required frontage on a road accepted by the Town and included on the Official Zoning Map, except as provided in § 280-a of the Town Law.

§ 144-130. Changes in zone requirements.

A lot which complies in dimension with the provisions of the zone shall be deemed to comply with any later re-upgrading in zoning. Any lot approved by the Town Board and Planning Board on a subdivision map shall be deemed to comply with lot dimension requirements.

§ 144-131. Compliance with Subdivision Regulations required.

No building permit may be issued that will allow more than four residences, including rezoning residences, on lots divided from one plot until and after subdivision plans are approved by the Planning Board and the Town Board. See Town of Elma Subdivision Regulations.¹⁰⁹

§ 144-132. Corner lots.

Any and all corner lots must be not less than 120 feet in width by the depth required for the area classification. Side setback or corner lots may be approved by the Zoning Enforcement Officer at not less than 50 feet from the side road line.

§ 144-133. Building permits for accessory structures.

No building permit shall be issued for an accessory structure until the main or principal structure or building is 50% completed.

§ 144-134. Use permit required.

Use permits shall be required for all uses enumerated in §§ 144-72 and 144-87 of this chapter.

§ 144-135. Special use permits. [Added 10-1-2008 by L.L. No. 5-2008]**A. General provisions.**

- (1) A use listed as requiring a special use permit shall not be presumed to be an allowable use. It shall be the responsibility of the petitioner for a special use permit to prove to the satisfaction of the Town that the items listed in this section and under the section of that particular special use are met. These uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered on an individual case.
- (2) No special permit shall be authorized by the Town unless, in addition to other requirements specified in this chapter, it finds that such special permit:
 - (a) Will be in harmony with the general purposes and intent of this chapter.
 - (b) Will not create a hazard to health, safety, or the general welfare.
 - (c) Will not alter the essential character of the neighborhood nor be detrimental to the residents thereof.
 - (d) Will not otherwise be detrimental to the public convenience and welfare.

¹⁰⁹Editor's Note: See Ch. 123, Subdivision of Land.

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- (3) In authorizing any special permit, the Town Board may prescribe appropriate conditions to minimize adverse effects on the character of the surrounding area and to safeguard the public health, safety, or general welfare.

B. Application procedure.

- (1) Applications for special use permits shall be acted on by the Town Board after a public hearing.
- (2) A plan or the proposed development of a site for a permitted special use shall be submitted with an application for a special use permit, and such plan shall show the location of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, and other pertinent information that may be necessary to determine if the proposed special use meets the requirements of this chapter.
- (3) If a special use permit is granted, the applicant will then proceed with site plan approvals and with any other required approvals or permits.

C. Penalties for offenses.

- (1) In the event of any violation of a special use permit, the Town may seek enforcement under any available authority, including but not limited to Town Law § 268.
- (2) Any use receiving a special use permit that subsequently does not meet the requirements and/or conditions of that permit or this chapter shall be subject to fines under the Town Law and shall have its permit revoked, and the use shall be terminated within 90 days of notification by the Town.

D. Expiration. A special use permit shall be deemed to authorize only one particular use and shall expire if the special use shall cease for a period of more than one year.

§ 144-136. through § 144-139. (Reserved)

ARTICLE XVI
Multiple Dwellings
[Added 9-6-1995; amended 2-4-2015 by L.L. No. 1-2015]

§ 144-140. Purpose.

The purpose of this article shall be to regulate the construction or conversion of existing structures to multiple dwellings to ensure that the health, safety and welfare of the citizens of the Town of Elma shall be protected and promoted in the general area of controlled growth, planning and in accordance with the intent of the Comprehensive Planning of the Town of Elma, New York, and in order to maintain the rural atmosphere and character of the Town. These regulations supplement the requirements of the zoning overlays which allow multiple dwellings.

§ 144-141. Special procedure for multiple dwellings.

- A. Any owner of property wishing to construct or convert to multiple dwellings shall apply to the Building Inspector and ultimately the Erie County Health Department, and/or for any and all necessary local, county, state and federal permits. The Building Inspector shall first refer the matter to the Town Board for a preliminary business use permit review and shall notify, in writing, all landowners contiguous to the subject property of the application. In addition, the Building Inspector shall be the person designated to collect all such plans, memoranda, undertakings and any other data or documents necessary for the granting of approval or disapproval of a project. Upon receipt of the documentation associated with the business use permit application, the Building Inspector shall transmit all materials to the Town Board. After review of the project and with input received from Town Departments and the public at public meeting(s), the Town Board shall decide whether the project meets the intent of the Zoning Ordinance and specifically the objectives of the applicable overlay and Article XVI (Multiple Dwellings). If the Town Board determines that the project appears to meet the Zoning Ordinance, the applicable overlay and Article XVI, for potential issuance of the preliminary business use permit, the project will be referred to the Planning Board for their review and recommendation.
- (1) If the applicant chooses to proceed with the project, he/she shall make formal application to the Town for the appropriate other approvals; subdivision, site plan, etc. The Planning Board shall receive these plans and review them in accordance with appropriate Town codes and requirements. The Planning Board can also receive input from the Highway Department, Water Department, Building Inspector, the applicable fire company, school district, law enforcement agency, Town Engineer, Sewer Superintendent (if applicable), and the comments of the neighboring landowners if any. Upon completion of its preliminary review, the Planning Board shall transmit the package to the Town Board along with its comments and any recommendation for approval, modification or rejection for the Town Board's approval, modification or rejection of the project. Upon receipt of the Planning Board's recommendation, the Town Board shall officially begin the SEQR process (coordinated review, if necessary) and any required county referral. The Town Board will also set and hold a public hearing on the proposed project. The Town Board, after completing the above-required SEQR process, shall either approve the preliminary business use permit for the multiple-dwellings project proposed, make modifications which will require the package to be returned to the Planning Board for further review and retransmittal to the Town Board, or reject the multiple-dwellings project proposed. In the event that the Town Board or the Planning Board elects or recommends rejection of the construction and/or conversion of said project in its entirety, then the reasons for the rejection shall be stated.
 - (2) Once the Town Board completes the SEQR process and if the preliminary business use permit is granted, the project can return to the Planning Board to finalize other required approvals; site plan, subdivision, etc.
 - (3) After the project is completed, but prior to a final certificate of occupancy being issued, the Town Board will review the completed project for conformance with the project's approvals, and if found to meet all

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requirements, issue a final business use permit.

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- B. Standards. After receipt of the multiple-dwelling application, both the Planning Board and the Town Board, in making their recommendation and/or approval, disapproval or modification, shall determine that:
- (1) The use will not prevent or substantially impair either the reasonable and orderly use or the reasonable and orderly development of other properties in the neighborhood.
 - (2) The hazards or disadvantages to the neighborhood from the location of such use at the property are outweighed by the advantage to be gained either by the neighborhood or the Town.
 - (3) The health, safety, welfare, comfort, convenience and order of the Town will not be adversely affected by the authorized use.
 - (4) Such use will be in harmony with and promote the general purposes and intent of this chapter, including the character of the neighborhood where the multiple dwelling is to be located.
- C. Compliance required. The business use permit shall be deemed abandoned in the event that the use permitted thereby is discontinued for a period of six months or more. The preliminary business use permit shall also be deemed discontinued if the construction of the premises permitted by the preliminary business use permit is not commenced within two years from the date of issuance thereof or if construction or alteration of the premises as authorized under this article is not completed within a period of two years from the issuance of the building permit. An extension of time may be granted by the Town Board upon good reason.

§ 144-142. Guidelines to be considered.

In determining whether or not to approve or recommend the approval or disapproval of a proposed multiple-dwellings project or development, the Planning Board and the Town Board shall take into consideration the following factors and/or guidelines:

- A. The entire property proposed for the multiple-dwellings project shall be included in one drainage district.
- B. Individual floor space size. Minimum habitable floor area per dwelling unit for a single-story dwelling unit shall be 650 square feet, and for a two-story dwelling unit, the first-floor minimum habitable floor area shall be 500 square feet with a combined habitable floor area of 800 square feet. No part of the habitable floor area shall be below grade level.
- C. Recreation and green space. The multiple-dwellings project must reserve adequate green space within the project. There shall be provided on the site of each multiple-dwellings development an area or areas devoted to the joint or common recreational use by the residents thereof. Such recreational space shall consist of not less than 500 square feet of space per dwelling unit. Each such recreational space shall be developed for passive and active purposes and shall include facilities normally attendant thereto. Where appropriate, open space shall be located on the property.
- D. The water supply shall be of a type and in a location in compliance with the standards of the Elma Water Department and shall be approved by the Water Superintendent.¹¹⁰ All water systems will be constructed with the intent that the system shall be taken over by the Town of Elma. Such takeover by the Town, however, shall not be without the recommendation of the Town Water Superintendent that the system is operating properly and meets all current local, state and federal standards.
- E. Adequate provisions must be made for the collection and disposal of stormwater runoff (in accordance with New York State and Town of Elma requirements) from the site and for disposal of refuse or other waste whether liquid, solid, gaseous or other character.¹¹¹

¹¹⁰.Editor's Note: See Ch. 140, Water.

¹¹¹.Editor's Note: See Ch. 120, Stormwater Management.

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- F. Sewers. Any plans for sewer or sewerage systems must be recommended by the Town Engineer prior to approval of the project. In addition to being approved by the Erie County Department of Health, all sewers, sewer systems and sewer plants will be constructed with the intent that the system shall be taken over by the Town of Elma. Such takeover by the Town, however, shall not be without the recommendation of the Town Engineer that the system is operating properly and meets all current local, state and federal standards. Any sewage treatment plants or facilities must be totally enclosed in a structure.
- G. Roads. To provide adequate access, all roads shall:
- (1) Have a right-of-way width of no less than 60 feet.
 - (2) Have a paved road width of no less than 30 feet.
 - (3) Standards. All roads shall be built to Town road standards regardless of whether or not it is to be accepted as a public road. A recommendation by the Highway Superintendent and appropriate fire company shall be required prior to the approval of any project.
 - (a) Adequate provisions must be made for emergency conditions.
 - (b) If the planned road is to be a dead end, then a turnaround adequate for fire, police, ambulance and plow service shall be constructed.
 - (c) All proposed curb cuts must be approved by the Highway Superintendent so as to minimize the number necessary into existing streets or roads.
- H. Parking requirements.
- (1) A minimum of two paved parking spaces shall be provided for each dwelling unit, one of which shall be completely enclosed and covered.
 - (2) There must be included in the project the dedication of reserved parking spaces for guests of the residents of the multiple-dwellings project in addition to parking facilities for the residents. There must be at least one additional parking spot for every two bedrooms or any fraction above two bedrooms. Appropriate screening shall be provided so as to prevent glare from headlights.
 - (3) The parking spaces, including the guest parking, shall be no more than 150 feet from the door of the multiple-dwelling unit it is intended to serve.
 - (4) There must be adequate off-street parking as required by the provisions of this chapter, and the layout of the spaces and driveways must be convenient and conducive to safe operation.
- I. Access facilities are adequate for the estimated traffic so as to assure the public safety in relation to the general character of the neighborhood and other existing or permitted uses within it and so as to avoid congestion. Vehicular entrances and exits shall be clearly visible from the street and not be within 75 feet of the intersection of existing street lines at a street intersection except under unusual circumstances.
- J. Adequate buffer yards, landscaping, walls, fences and screening are provided where necessary to protect adjacent properties and land uses. Debris collection areas shall be fenced or otherwise adequately enclosed to minimize disturbance, unsightliness and potential health concerns. Depending upon the location and nature of the multiple-dwellings project, it may be necessary, desirable or required that screening and/or berms or other buffers or screens be created or developed so as to retain the quiet atmosphere of the Town.
- K. Existing municipal services and facilities are adequate to provide for the needs of the proposed use.
- L. Utility service. All electrical and telephone lines in any multiple-dwellings development shall be placed underground, and all units must be provided with separate utilities or independently serviced by separate heating, water, sewer, electricity, gas and/or other facility or utility services where the same are provided,

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- M. The proposed use recognizes and provides for further special conditions and safeguards required for particular uses as may be determined by the Town Board and/or Planning Board.
- N. Converted multiple-dwellings. The standards for converted multiple-dwellings shall be the same as for new construction. However, the Town Board may approve a project for said conversion when certain items required are considered to be grandfathered prior to the enactment of this article. Any and all exceptions and grandfathered requirements will be determined by the Town Board in its approval, modification or rejection of the project. When the property to be converted for multiple-dwelling use is historically, culturally or architecturally significant, the conversion should be guided by the Secretary of the Interior's Standards for Rehabilitation of Historic Properties.

ARTICLE XVIA
Clinton Multiple Dwelling Overlay
[Added 2-4-2015 by L.L. No. 1-2015]

§ 144-142.1. Statement of intent.

In accordance with the Regional Comprehensive Plan and the work of the Multiple Dwelling Code Committee (MDCC), the Clinton Multiple Dwelling Overlay (CMDO) is established to allow for restricted types of multiple dwellings in the Clinton Street area as defined below. This area is located off of the Transit Road corridor and adjoining the Town of Lancaster. This provides an opportunity to provide multiple-dwelling housing to commuters and to residents of the Town in a manner that meets the rural aesthetics of Elma.

§ 144-142.2. Boundaries.

The boundaries of the Clinton Multiple Dwelling Overlay are in general as follows (see Town Zoning Map for specific location):

All parcels north of Clinton Street to the Lancaster Town boundary, extending east from the right-a-way off Transit Road (excluding parcels fronting Transit Road), to approximately 300 feet west of Homeward Road where it intersects with Clinton Road (excludes all parcels fronting Homeward road and the two parcels fronting Clinton to the east of Homeward).

§ 144-142.3. Effect upon zoning.

The standards of the Clinton Multiple Dwelling Overlay shall be superimposed over, and supplement, the underlying zoning standards. Each multiple dwelling use must conform to the applicable design standards of the underlying zoning district, as well as the standards of this overlay district and Article XVI (Multiple Dwellings), and, if there is a conflict, the more stringent standards shall apply.

§ 144-142.4. Objectives.

The standards contained herein, which govern multiple-dwelling development and redevelopment within the boundaries of the Clinton Multiple Dwelling Overlay (CMDO), are founded upon the following objectives:

- A. Establish standards to ensure that new multiple-dwelling development or redevelopment is in character in terms of scale, design, and layout with the rural character envisioned for this area of the Town.
- B. Reduce signage clutter by controlling the number and size of signs, the placement of signs, and the appearance of signage.
- C. Landscaping and other amenities should be incorporated into site development to enhance the site and screen parking areas.
- D. Design should take into consideration the objectives of this rural agrarian area. Incorporation of elements such as community gardens, picket fences, and other rural atmosphere amenities is strongly encouraged.

§ 144-142.5. Permitted uses.

The uses that are permitted within the Clinton Multiple Dwelling Overlay (CMDO) shall be determined by the underlying zoning district and supplemented as follows:

- A. The following principal uses are allowed in addition to those allowed in the underlining zoning:
 - (1) All multidwelling-type units as defined in this Zoning Code and as described in Article XVI (Multiple Dwellings), as well as a mixture of these types of uses on one lot.

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§ 144-142.6. Submission requirements.

(Refer to Article XVI for process and other requirements for multiple dwellings).

- A. The applicant shall meet all submission requirements of site plan review.
- B. The applicant shall submit building plans and elevations indicating the facade treatments and construction materials and colors of all structures in compliance with the standards of the underlying zoning district and the CMDO.
- C. The applicant shall submit a minimum of two different renderings of the proposed structure(s) to be developed on the site to allow the Planning Board to choose the alternative or recommend other alternatives that they feel will best comply with the overlay.
- D. The applicant shall submit a site plan that identifies all components of the development and indicates compliance with all the requirements of the Zoning Law and this overlay.
- E. The applicant shall submit a landscape plan identifying the location, type, size, and planting specifications of all landscaping proposed for the site. The landscape plan shall also identify, in general, existing vegetation on the site.
- F. The applicant shall submit a signage plan that shows the size, type, color, placement, lighting, design, and construction materials of each sign. Each proposed sign for the site must comply with all the requirements of the Zoning Law and this overlay.

§ 144-142.7. Other zoning requirements and design standards.

All multiple dwelling developments within the Clinton Multiple Dwelling Overlay shall conform to the following requirements and standards:

- A. Minimum lot size: five acres (with a minimum frontage of 100 feet and a minimum depth of 300 feet).
- B. Density: eight units/acre.
- C. Height: 2.5 stories or a maximum of 32 feet.
- D. Maximum lot coverage. The maximum coverage of the proposed buildings, accessory buildings, driveways, parking areas, and other impervious surfaces is limited to 50% of the entire lot.
- E. Building setbacks. The following setbacks shall supersede the setbacks of the underlying zoning and apply to all multiple-dwelling developments within the CMDO to promote the rural atmosphere. Where a setback is not established, the underlying setback shall be applied.
 - (1) Front building setbacks shall be no less than 50 feet and no more than 100 feet as measured from the street right-of-way. Awnings, balconies, porches, and other architectural amenities shall be permitted to encroach upon the front setback by a maximum of five feet.
- F. Architecture. The architecture and design of any structure within the CMDO shall comply with the standards of the underlying zoning and shall conform to the following general guidelines:
 - (1) General design. The architecture and design of any multiple dwelling structure shall:
 - (a) Enhance the visual quality of the area;
 - (b) Be harmonious with adjacent uses;
 - (c) All multiple-dwelling structures should avoid windows and entranceways that have materials and designs that would make the development appear too commercial; instead include such visual

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design as peaked roofs, etc.

(d) Comply with any additional Town Design Guidelines, where applicable.

(2) Building materials.

(a) Any side of a building that faces a street or public right-of-way shall incorporate a facade constructed of any of the following materials: stone, brick, masonry, marble, wood or vinyl siding, or other material approved by the Planning Board.

(b) The use of cast concrete, cinder blocks, or metal paneling shall not be used on sides of a building that faces a street or public right-of-way.

G. Site layout. The site layout for a multiple dwelling within the CMDO shall comply with the general standards of the underlying zoning and conform to the following overlay guidelines. In the case of conflicting standards, the regulations of the overlay district shall prevail.

(1) All new multiple-dwelling developments within the CMDO shall not have parking lots in front of the building. Buildings should face the road and be open and inviting to pedestrian traffic.

H. Parking and loading areas. Off-street parking shall comply with the standards of the underlying zoning and Article IV of the Zoning Code, and shall conform to the following additional standards:

(1) Parking and loading areas must be set back from the street right-of-way a minimum of 75 feet.

(2) A minimum of 10% of the interior of a parking area shall be devoted to landscaping used to break up the parking stalls where the parking area is visible from the public right-of-way.

(3) Parking areas shall not contain a continuous single row of parking stalls of greater than five parking spaces without interruption by a landscaped island where the parking area is visible from the public right-of-way.

(4) In addition to the screening of a parking area required in § 144-44E(3), the use of decorative ornamental features, masonry walls, fencing, or a mix of each is encouraged to additionally screen parking and loading areas and to create a more visually appealing streetscape.

I. Landscaping/screening. Landscaping and screening shall comply with the standards of the underlying zoning and shall conform to the following additional standards:

(1) For every 25 feet of road frontage, a street tree shall be planted in conformance with county and Town standards, where applicable.

(2) Additional shade trees shall be planted throughout the site at a ratio of one tree per 2,000 square feet of lot area.

(3) The required front yard shall consist of vegetative ground cover, perennial and annual landscaped areas, and/or other amenities that enhance the visual appearance of the streetscape.

(4) All landscaped areas shall be maintained and any vegetation that dies shall be replaced during the following planting season (see applicable Town requirements for replacement requirements: two-year warranty).

(5) The site should include an area set aside as a community gardens area to be utilized by the residents of the facility. This will be designed to enhance the site and be part of the rural/agricultural nature of the area.

J. Signage. Signage shall comply with the standards of the underlying zoning and § 144-102.1, Signs, and shall conform to the following additional standards:

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- (1) Proposed signage shall be designed to complement the architecture of the building.
- (2) Each building shall be permitted one sign.
- (3) Freestanding signs cannot be pole mounted. All signage shall be ground signs with landscaping.
- (4) The use of digital signage or flashing signs is not permitted.
- (5) Overall signage may not be lit from internal lights, only the use of individually internally lit characters on a sign, back-lit signage, or directional lighting shall be used to light signage. The use of flashing or neon lights is not permitted.
- (6) The appearance and placement of signage shall be subject to Planning Board discretion as part of the site plan review process.

K. Other.

- (1) The use of decorative lighting structures is encouraged to comply with the character envisioned for this area.
- (2) The maximum height of any lighting structures shall be 16 feet.
- (3) Fencing placed in the front yard shall be no higher than three feet and shall consist of wood or faux wood picket or ornamental iron construction. A mix of stone, brick, or other masonry wall and fencing may be permitted. The use of stockade, metal, woven wire, or barb wire fences is not permitted in the front yard.

ARTICLE XVIB
Springbrook Multiple Dwelling Overlay
[Added 2-4-2015 by L.L. No. 1-2015]

§ 144-142.8. Statement of intent.

In accordance with the Regional Comprehensive Plan and the work of the Multiple Dwelling Code Committee (MDCC), the Seneca Street Springbrook Area Multiple Dwelling Overlay (SMDO) is established to allow for restricted types of multiple dwellings along Seneca Street as defined below. This area is a hamlet area which offers the opportunity for small-scale multiple-dwelling residential units and small-scale commercial uses to work together for the revitalization of this area.

§ 144-142.9. Boundaries.

The boundaries of the Springbrook Multiple Dwelling Overlay are in general as follows (see Town Zoning Map for specific location):

All parcels fronting both sides of Seneca Street to a maximum depth of 500 feet from the roadway right-a-way (as of the date of this law enactment), from Northrup Road to the northwest and Old Pound Road to the north, then south to Rice Road, including the parcel located southeast across from Rice Road.

§ 144-142.10. Effect upon zoning.

The standards of the Springbrook Multiple Dwelling Overlay shall be superimposed over, and supplement, the underlying zoning standards. Each multiple dwelling use must conform to the applicable design standards of the underlying zoning district, as well as the standards of this overlay district and Article XVI (Multiple Dwellings), and, if there is a conflict, the more stringent standards shall apply.

§ 144-142.11. Objectives.

The standards contained herein, which govern multiple-dwelling development and redevelopment within the boundaries of the Springbrook Multiple Dwelling Overlay (SMDO), are founded upon the following objectives:

- A. Establish standards to ensure that new multiple-dwelling development or redevelopment is in character in terms of scale, design, and layout with the rural character envisioned for this area of the Town.
- B. Reduce signage clutter by controlling the number and size of signs, the placement of signs, and the appearance of signage.
- C. Landscaping and other amenities should be incorporated into site development to enhance the site and screen parking areas.
- D. Design should take into consideration the objectives of this rural hamlet area. Incorporation of elements such as picket fences and other rural atmosphere amenities is strongly encouraged.

§ 144-142.12. Permitted uses.

The uses that are permitted within the Springbrook Multiple Dwelling Overlay shall be determined by the underlying zoning district and supplemented as follows:

- A. The following principal uses are allowed in addition to those allowed in the underlying zoning:
 - (1) One three- or four-unit multiple-dwelling building per lot (multiple dwellings as defined in the definition section of the Zoning Code¹¹² and as described in Article XVI).

§ 144-142.13. Submission requirements.

(Refer to Article XVI for process and other requirements for multiple dwellings).

- A. The applicant shall meet all submission requirements of site plan review.
- B. The applicant shall submit building plans and elevations indicating the facade treatments and construction materials and colors of all structures in compliance with the standards of the underlying zoning district and the SMDO.
- C. The applicant shall submit a minimum of two different renderings of the proposed structure(s) to be developed on the site to allow the Planning Board to choose the alternative or recommend other alternatives that they feel will best comply with the overlay.
- D. The applicant shall submit a site plan that identifies all components of the development and indicates compliance with all the requirements of the Zoning Law and this overlay.
- E. The applicant shall submit a landscape plan identifying the location, type, size, and planting specifications of all landscaping proposed for the site. The landscape plan shall also identify, in general, existing vegetation on the site.
- F. The applicant shall submit a signage plan that shows the size, type, color, placement, lighting, design, and construction materials of each sign. Each proposed sign for the site must comply with all the requirements of the Zoning Law and this overlay.

§ 144-142.14. Other zoning requirements and design standards.

All multiple-dwelling developments within the Springbrook Multiple Dwelling Overlay shall conform to the following requirements and standards:

- A. Minimum unit size: single story 650 square feet per unit; two story 500 to 800 square feet per unit (§ 144-142B).
- B. Minimum lot size: 30,000 square feet (minimum lot width of 100 feet and minimum lot depth of 300 feet).
- C. Density: eight units per acre and must meet all other zoning requirements.
- D. Height: 2.5 stories.
- E. Maximum lot coverage. The maximum coverage of the proposed buildings, accessory buildings, driveways, parking areas, and other impervious surfaces is limited to 50% of the entire lot.
- F. Building setbacks. The following setbacks shall supersede the setbacks of the underlying zoning and apply to all multiple-dwelling developments within the SMDO to promote the rural atmosphere. Where a setback is not established, the underlying setback shall be applied.
 - (1) Front building setbacks shall be no less than 40 feet and no more than 80 feet as measured from the street right-of-way. Awnings, balconies, porches, and other architectural amenities shall be permitted to encroach upon the front setback by a maximum of five feet.
- G. Architecture. The architecture and design of any structure within the SMDO shall comply with the standards of the underlying zoning and shall conform to the following general guidelines:
 - (1) General design. The architecture and design of any multiple-dwelling structure shall:
 - (a) Comply with the character envisioned for this area, enhance the visual quality of the area;

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- (b) Be harmonious with adjacent uses;
- (c) All multiple-dwelling structures should have the appearance of a single-family home, including peak roofs, front doors and windows, etc.
- (d) Comply with any additional Town Design Guidelines, where applicable.
- (2) Building materials.
 - (a) Any side of a building that faces a street or public right-of-way shall incorporate a facade constructed of any of the following materials: stone, brick, masonry, marble, wood or vinyl siding, or other material approved by the Planning Board.
 - (b) The use of cast concrete, cinder blocks, or metal paneling shall not be used on sides of a building that faces a street or public right-of-way.
- H. Site layout. The site layout for a multiple dwelling within the SMDO shall comply with the general standards of the underlying zoning and conform to the following overlay guidelines. In the case of conflicting standards, the regulations of the overlay district shall prevail.
 - (1) All new multiple-dwelling development buildings within the SMDO shall be located towards the road with parking behind the structure or in garages.
- I. Parking and loading areas. Off-street parking shall comply with the standards of the underlying zoning and Article IV of the Zoning Code, and shall conform to the following additional standards:
 - (1) Parking and loading areas must be behind the building.
 - (2) A minimum of 10% of the interior of a parking area shall be devoted to landscaping used to break up the parking stalls where the parking area is visible from the public right-of-way.
 - (3) Parking areas shall not contain a continuous single row of parking stalls of greater than five parking spaces without interruption by a landscaped island where the parking area is visible from the public right-of-way.
 - (4) In addition to the screening of a parking area required in § 144-44E(3), the use of decorative ornamental features, masonry walls, fencing, or a mix of each is encouraged to additionally screen parking and loading areas and to create a more visually appealing streetscape.
- J. Landscaping/screening. Landscaping and screening shall comply with the standards of the underlying zoning and shall conform to the following additional standards:
 - (1) For every 25 feet of road frontage, a street tree shall be planted in conformance with county and Town standards, where applicable. (A "street tree" is defined as any tree growing within the public right-of-way; provided, however, that no shrub planting or tree foliage shall be placed or maintained which obstructs vision at an elevation between three and seven feet above street level [§ 144-44E(3)(a)].
 - (2) Additional shade trees shall be planted throughout the site at a ratio of one tree per 2,000 square feet of lot area.
 - (3) The required front yard shall consist of vegetative ground cover, perennial and annual landscaped areas, and/or other amenities that enhance the visual appearance of the streetscape.
 - (4) All landscaped areas shall be maintained and any vegetation that dies shall be replaced during the following planting season. (New code: two-year warranty.)
- K. Signage. Signage shall comply with the standards of the underlying zoning and § 144-102.1, Signs, and shall conform to the following additional standards:

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- (1) Proposed signage shall be limited in this district as these uses are small scale residential units.
- (2) No building signs are allowed.
- (3) Only small freestanding ground-mounted signs are permitted. (Ten square feet.)
- (4) The use of digital signage or flashing signs is not permitted.
- (5) Overall signage may not be lit from internal lights, only the use of individually internally lit characters on a sign, back-lit signage, or directional lighting shall be used to light signage. The use of flashing or neon lights is not permitted.
- (6) The appearance and placement of signage shall be subject to Planning Board discretion as part of the site plan review process.

L. Other.

- (1) The use of decorative lighting structures is encouraged to comply with the character envisioned for this area.
- (2) The maximum height of any lighting structures shall be 16 feet.
- (3) Fencing placed in the front yard shall be no higher than three feet and shall consist of wood or faux wood picket or ornamental iron construction. A mix of stone, brick, or other masonry wall and fencing may be permitted. The use of stockade, metal, woven wire, or barb wire fences is not permitted in the front yard.

ARTICLE XVIC
Transit South Multiple Dwelling Overlay
[Added 2-4-2015 by L.L. No. 1-2015]

§ 144-142.15. Statement of intent.

In accordance with the Regional Comprehensive Plan and the work of the Multiple Dwelling Code Committee (MDCC), the Transit South (near State Highway 400) Multiple Dwelling Overlay (TSMDO) is established to allow for a variety of types of multiple dwellings in the Transit Road, near State Highway 400 area, as defined below. This area lies within the mixed-use area of the Town's Comprehensive Plan and offers easy access to Route 78 and to Route 400.

§ 144-142.16. Boundaries.

The boundaries of Transit South Multiple Dwelling Overlay are in general as follows (see Town Zoning Map for specific location):

All parcels fronting Transit Road between the Route 400 interchange and Seneca Street to the south; including the corner parcel on the south side of Seneca Street (as of the date of enactment of this law). The boundary of the district excludes the rear 100 feet of the parcels, except for the two corner parcels at Seneca Street (no restriction on the back 100 feet of these properties).

§ 144-142.17. Effect upon zoning.

The standards of the Transit South Multiple Dwelling Overlay shall be superimposed over, and supplement, the underlying zoning standards. Each multiple-dwelling use must conform to the applicable design standards of the underlying zoning district, as well as the standards of this overlay district and Article XVI (Multiple Dwellings), and, if there is a conflict, the more stringent standards shall apply.

§ 144-142.18. Objectives.

The standards contained herein, which govern multiple-dwelling development and redevelopment within the boundaries of the Transit South Multiple Dwelling Overlay (TSMDO), are founded upon the following objectives:

- A. Establish standards to ensure that new multiple-dwelling development or redevelopment is in character in terms of scale, design, and layout with the rural character envisioned for this area of the Town.
- B. Reduce signage clutter by controlling the number and size of signs, the placement of signs, and the appearance of signage.
- C. Landscaping and other amenities should be incorporated into site development to enhance the site and screen parking areas.
- D. Design should take into consideration the objectives of this rural agrarian area. Incorporation of elements such as community gardens, picket fences, and other rural atmosphere amenities is strongly encouraged.

§ 144-142.19. Permitted uses.

The uses that are permitted within the Transit South Multiple Dwelling Overlay shall be determined by the underlying zoning district and supplemented as follows:

- A. The following principal uses are allowed in addition to those allowed in the underlying zoning:
 - (1) All multiple-dwelling type units as defined in this Zoning Code¹¹³ and as described in Article XVI (Multiple Dwellings), as well as a mixture of these types of uses on one lot.

§ 144-142.20. Submission requirements.

(Refer to Article XVI for process and other requirements for multiple dwellings).

- A. The applicant shall meet all submission requirements of site plan review.
- B. The applicant shall submit building plans and elevations indicating the facade treatments and construction materials and colors of all structures in compliance with the standards of the underlying zoning district and the TSMDO.
- C. The applicant shall submit a minimum of two different renderings of the proposed structure(s) to be developed on the site to allow the Planning Board to choose the alternative or recommend other alternatives that they feel will best comply with the overlay.
- D. The applicant shall submit a site plan that identifies all components of the development and indicates compliance with all the requirements of the Zoning Law and this overlay.
- E. The applicant shall submit a landscape plan identifying the location, type, size, and planting specifications of all landscaping proposed for the site. The landscape plan shall also identify, in general, existing vegetation on the site.
- F. The applicant shall submit a signage plan that shows the size, type, color, placement, lighting, design, and construction materials of each sign proposed for the site. Each proposed sign for the site must comply with all the requirements of the Zoning Law and this overlay.

§ 144-142.21. Other zoning requirements and design standards.

All multiple-dwelling developments within the Transit South Multiple Dwelling Overlay shall conform to the following requirements and standards:

- A. Minimum lot size: two acres (minimum lot width of 100 feet and minimum lot depth of 300 feet).
- B. Density: eight to 12 units per acre (meeting other zoning requirements and any requirements for septic systems).
- C. Height: 2.5 stories or a maximum of 32 feet.
- D. Maximum lot coverage. The maximum coverage of the proposed buildings, accessory buildings, driveways, parking areas, and other impervious surfaces is limited to 75% of the entire lot.
- E. Building setbacks. The following setbacks shall supersede the setbacks of the underlying zoning and apply to all multiple-dwelling developments within the TSMDO to promote the rural atmosphere. Where a setback is not established, the underlying setback shall be applied.
 - (1) Front building setbacks shall be 100 feet as measured from the street right-of-way. Awnings, balconies, porches, and other architectural amenities shall be permitted to encroach upon the front setback by a maximum of five feet.
- F. Architecture. The architecture and design of any structure within the TSMDO shall comply with the standards of the underlying zoning and shall conform to the following general guidelines:
 - (1) General design. The architecture and design of any multiple-dwelling structure shall:
 - (a) Comply with the character envisioned for this area, enhance the visual quality of the area;
 - (b) Be harmonious with adjacent uses;

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- (c) All multiple-dwelling structures should include peak roofs;
 - (d) Comply with any additional Town Design Guidelines, where applicable.
- (2) Building materials.
 - (a) Any side of a building that faces a street or public right-of-way shall incorporate a facade constructed of any of the following materials: stone, brick, masonry, marble, wood or vinyl siding, or other material approved by the Planning Board.
 - (b) The use of cast concrete, cinder blocks, or metal paneling shall not be used on sides of a building that faces a street or public right-of-way.
- G. Site layout. The site layout for a multiple dwelling within the TSMDO shall comply with the general standards of the underlying zoning and conform to the following overlay guidelines. In the case of conflicting standards, the regulations of the Overlay District shall prevail.
 - (1) All new multiple-dwelling development building within the TSMDO shall face Transit Road.
 - (2) Accessory buildings will be located behind the structure.
 - (3) Required fifty-foot natural setback buffer at rear of site (no disturbance).
- H. Parking and loading areas. Off-street parking shall comply with the standards of the underlying zoning and Article IV of the Zoning Code, and shall conform to the following additional standards:
 - (1) Parking and loading areas must be set back from the street right-of-way a minimum of 100 feet.
 - (2) A minimum of 10% of the interior of a parking area shall be devoted to landscaping used to break up the parking stalls where the parking area is visible from the public right-of-way.
 - (3) Parking areas shall not contain a continuous single row of parking stalls of greater than five parking spaces without interruption by a landscaped island where the parking area is visible from the public right-of-way.
 - (4) In addition to the screening of a parking area required in § 144-44E(3), the use of decorative ornamental features, masonry walls, fencing, or a mix of each is encouraged to additionally screen parking and loading areas and to create a more visually appealing streetscape.
- I. Landscaping/screening. Landscaping and screening shall comply with the standards of the underlying zoning and shall conform to the following additional standards:
 - (1) For every 25 feet of road frontage, a street tree shall be planted in conformance with county and Town standards, where applicable.
 - (2) Additional shade trees shall be planted throughout the site at a ratio of one tree per 2,000 square feet of lot area.
 - (3) The required front yard shall consist of vegetative ground cover, perennial and annual landscaped areas, and/or other amenities that enhance the visual appearance of the streetscape.
 - (4) All landscaped areas shall be maintained and any vegetation that dies shall be replaced during the following planting season. (New code: two-year warranty.)
- J. Signage. Signage shall comply with the standards of the underlying zoning and § 144-102.1, Signs, and shall conform to the following additional standards:
 - (1) Proposed signage shall be designed to complement the architecture of the building.

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- (2) Each building shall be permitted one building sign.
- (3) Individual building signs shall not be larger than 20 square feet.
- (4) Building signs shall be completely affixed to a building and shall not protrude from the building more than six inches. An exception may be granted by the Planning Board for a building sign that protrudes from a building by a supporting arm or other ornamental feature of no more than five feet so long as the sign is perpendicular to the building facade and sidewalk and does not obstruct views, cause a safety hazard, or negatively impact the character envisioned for this area.
- (5) Freestanding signs are permitted, but the restrictions for ground signs, of a maximum of 12 feet in height.
- (6) The use of digital signage or flashing signs is not permitted.
- (7) Overall signage may not be lit from internal lights, only the use of individually internally lit characters on a sign, back-lit signage, or directional lighting shall be used to light signage. The use of flashing or neon lights is not permitted.
- (8) The appearance and placement of signage shall be subject to Planning Board discretion as part of the site plan review process.

K. Other.

- (1) The use of decorative lighting structures is encouraged to comply with the character envisioned for this area.
- (2) The maximum height of any lighting structures shall be 16 feet.
- (3) Fencing placed in the front yard shall be no higher than three feet and shall consist of wood or faux wood picket or ornamental iron construction. A mix of stone, brick, or other masonry wall and fencing may be permitted. The use of stockade, metal, woven wire, or barb wire fences is not permitted in the front yard.

ARTICLE XVID
Transit North Multiple Dwelling Overlay
[Added 2-4-2015 by L.L. No. 1-2015]

§ 144-142.22. Statement of intent.

In accordance with the Regional Comprehensive Plan and the work of the Multiple Dwelling Code Committee (MDCC), the Transit North Multiple Dwelling Overlay (TNMDO) is established to allow for a variety of types of multiple dwellings in the Transit Road North area as defined below. This area is located along the busy Transit Road corridor in the mixed-use area denoted in the Town's Comprehensive Plan.

§ 144-142.23. Boundaries.

The boundaries of the Transit North Multiple Dwelling Overlay are in general as follows (see Town Zoning Map for specific location):

All parcels, to a maximum depth of 800 feet, fronting Transit Road from Bullis Road north to the Lancaster Town line (as of the date of enactment of this law).

§ 144-142.24. Effect upon zoning.

The standards of the Transit North Multiple Dwelling Overlay shall be superimposed over, and supplement, the underlying zoning standards. Each multiple-dwelling use must conform to the applicable design standards of the underlying zoning district, as well as the standards of this overlay district and Article XVI (Multiple Dwellings), and, if there is a conflict, the more stringent standards shall apply.

§ 144-142.25. Objectives.

The standards contained herein, which govern multiple-dwelling development and redevelopment within the boundaries of the Transit North Multiple Dwelling Overlay (TNMDO), are founded upon the following objectives:

- A. Establish standards to ensure that new multiple-dwelling development or redevelopment is in character in terms of scale, design, and layout with the rural character envisioned for this area of the Town.
- B. Reduce signage clutter by controlling the number and size of signs, the placement of signs, and the appearance of signage.
- C. Landscaping and other amenities should be incorporated into site development to enhance the site and screen parking areas.
- D. Design should take into consideration the objectives of this rural agrarian area. Incorporation of elements such as community gardens, picket fences, and other rural atmosphere amenities is strongly encouraged.

§ 144-142.26. Permitted uses.

The uses that are permitted within the Transit North Multiple Dwelling Overlay shall be determined by the underlying zoning district and supplemented as follows:

- A. The following principal uses are allowed in addition to those allowed in the underlying zoning:
 - (1) All multiple-dwelling-type units as defined by this Zoning Code¹¹⁴ and as described in Article XVI (Multiple Dwellings), as well as a mixture of these types of uses on one lot.

¹¹⁴Editor's Note: See § 144-2.

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§ 144-142.27. Submission requirements.

(Refer to Article XVI for process and other requirements for multiple dwellings).

- A. The applicant shall meet all submission requirements of site plan review.
- B. The applicant shall submit building plans and elevations indicating the facade treatments and construction materials and colors of all structures in compliance with the standards of the underlying zoning district and the TNMDO.
- C. The applicant shall submit a minimum of two different renderings of the proposed structure(s) to be developed on the site to allow the Planning Board to choose the alternative or recommend other alternatives that they feel will best comply with the overlay.
- D. The applicant shall submit a site plan that identifies all components of the development and indicates compliance with all the requirements of the Zoning Law and this overlay.
- E. The applicant shall submit a landscape plan identifying the location, type, size, and planting specifications of all landscaping proposed for the site. The landscape plan shall also identify, in general, existing vegetation on the site.
- F. The applicant shall submit a signage plan that shows the size, type, color, placement, lighting, design, and construction materials of each sign proposed for the site. Each proposed sign for the site must comply with all the requirements of the Zoning Law and this overlay.

§ 144-142.28. Other zoning requirements and design standards.

All multiple-dwelling developments within the Transit North Multiple Dwelling Overlay shall conform to the following requirements and standards:

- A. Minimum lot size: two acres, with a minimum of 100 feet of frontage and a minimum of 300 feet of depth (these uses can be placed on existing commercial property and contain both commercial and multifamily uses).
- B. Density: 15 units per acre and must meet all other zoning requirements.
- C. Height: three stories (maximum height of 36 feet).
- D. Maximum lot coverage. The maximum coverage of the proposed buildings, accessory buildings, driveways, parking areas, and other impervious surfaces is limited to 75% of the entire lot.
- E. Building setbacks. The following setbacks shall supersede the setbacks of the underlying zoning and apply to all multiple-dwelling developments within the TNMDO to promote the rural atmosphere. Where a setback is not established, the underlying setback shall be applied.
 - (1) Front building setbacks shall be no less than 50 feet from Transit Road as measured from the street right-of-way. Awnings, balconies, porches, and other architectural amenities shall be permitted to encroach upon the front setback by a maximum of five feet.
 - (2) This overlay allows residential units to be placed behind commercial uses.
- F. Architecture. The architecture and design of any structure within the TNMDO shall comply with the standards of the underlying zoning and shall conform to the following general guidelines:
 - (1) General design. The architecture and design of any multiple-dwelling structure shall:
 - (a) Comply with the character envisioned for this area, enhance the visual quality of the area;

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- (b) Be harmonious with adjacent uses;
 - (c) Multiple-dwelling structures can take on the appearance of more commercially styled buildings to fit into the character of this commercial area;
 - (d) Comply with any additional Town Design Guidelines, where applicable.
- (2) Building materials.
 - (a) Any side of a building that faces a street or public right-of-way shall incorporate a facade constructed of any of the following materials: stone, brick, masonry, marble, wood or vinyl siding, or other material approved by the Planning Board.
 - (b) The use of cast concrete, cinder blocks, or metal paneling shall not be used on sides of a building that faces a street or public right-of-way.
- G. Site layout. The site layout for a multiple dwelling within the TNMDO shall comply with the general standards of the underlying zoning and conform to the following overlay guidelines. In the case of conflicting standards, the regulations of the overlay district shall prevail.
 - (1) The layout of sites with the TNMDO can include the creative mixture of commercial and residential uses in a harmonious manner.
- H. Parking and loading areas. Off-street parking shall comply with the standards of the underlying zoning and Article IV of the Zoning Code, and shall conform to the following additional standards:
 - (1) Parking and loading areas must be set back from the street right-of-way a minimum of 100 feet.
 - (2) A minimum of 10% of the interior of a parking area shall be devoted to landscaping used to break up the parking stalls where the parking area is visible from the public right-of-way.
 - (3) Parking areas shall not contain a continuous single row of parking stalls of greater than five parking spaces without interruption by a landscaped island where the parking area is visible from the public right-of-way.
 - (4) In addition to the screening of a parking area required in § 144-44E(3), the use of decorative ornamental features, masonry walls, fencing, or a mix of each is encouraged to additionally screen parking and loading areas and to create a more visually appealing streetscape.
- I. Landscaping/screening. Landscaping and screening shall comply with the standards of the underlying zoning and shall conform to the following additional standards:
 - (1) For every 25 feet of road frontage, a street tree shall be planted in conformance with county and Town standards, where applicable.
 - (2) Additional shade trees shall be planted throughout the site at a ratio of one tree per 2,000 square feet of lot area.
 - (3) The required front yard shall consist of vegetative ground cover, perennial and annual landscaped areas, and/or other amenities that enhance the visual appearance of the streetscape.
 - (4) All landscaped areas shall be maintained and any vegetation that dies shall be replaced during the following planting season. (New code: two-year warranty.)
- J. Signage. Signage shall comply with the standards of the underlying zoning and § 144-102.1, Signs, and shall conform to the following additional standards:
 - (1) Proposed signage shall be designed to complement the architecture of the building.

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- (2) Each building shall be permitted only one building sign.
- (3) Individual building signs shall not be larger than 20 square feet.
- (4) Building signs shall be completely affixed to a building and shall not protrude from the building more than six inches. An exception may be granted by the Planning Board for a building sign that protrudes from a building by a supporting arm or other ornamental feature of no more than five feet so long as the sign is perpendicular to the building facade and sidewalk and does not obstruct views, cause a safety hazard, or negatively impact the character envisioned for this area.
- (5) Freestanding signs are permitted and can be incorporated with other commercial signage on the site. New freestanding signage shall be ground mounted.
- (6) The use of digital signage or flashing signs is not permitted.
- (7) Overall signage may not be lit from internal lights, only the use of individually internally lit characters on a sign, back-lit signage, or directional lighting shall be used to light signage. The use of flashing or neon lights is not permitted.
- (8) The appearance and placement of signage shall be subject to Planning Board discretion as part of the site plan review process.

K. Other.

- (1) The use of decorative lighting structures is encouraged to comply with the character envisioned for this area.
- (2) The maximum height of any lighting structures shall be 16 feet.
- (3) Fencing placed in the front yard shall be no higher than three feet and shall consist of wood or faux wood picket or ornamental iron construction. A mix of stone, brick, or other masonry wall and fencing may be permitted. The use of stockade, metal, woven wire, or barb wire fences is not permitted in the front yard.

ARTICLE XVII
Transfer of Permitted Development Rights
[Added 7-21-1999]

§ 144-143. Purpose; objectives.

- A. These provisions are enacted to implement the goals and standards as stated herein, and the environmental conditions on any particular site by providing the means of achieving elements of the Town planning objective with reference to natural resources, population, utilities, business and housing, and, more particularly, to do so while maintaining the overall balance established between population capacity and ultimate commercial and business development.
- B. Further, land from which the development rights are to be transferred must have such characteristics that their open space preservation will fulfill at least one of the following objectives:
- (1) To protect the natural, scenic or agricultural qualities of open land.
 - (2) To enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value.
 - (3) To enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource.

§ 144-144. Definitions.

As used in this article, the following terms shall have the meanings indicated:

PLANNING BOARD — The Planning Board of the Town of Elma.

RECEIVING DISTRICT — A district or lot to which development rights are transferred.

SENDING DISTRICT — The district or lot from which development rights are transferred.

TOWN — The Town of Elma.

TOWN BOARD — The Town Board of Elma.

§ 144-145. Authorization for transfer.

In pursuit of these purposes, the Town Board of the Town of Elma may authorize the transfer of permitted development rights from one parcel of land to another parcel where such authorization shall be found to be beneficial to the Town through serving the interests enumerated in § 144-143 of this article and to be in accordance with the provisions of this article.

§ 144-146. Procedure; fee.

- A. An applicant for the transfer of permitted development rights shall present ownership and description documentation satisfactory to the Town Board. An applicant may be an individual, a corporation, a partnership, a subdivision of the government of the Town of Elma or the Town Board itself. Such application shall indicate:
- (1) The location, land area and related development rights permitted under the applicable provisions of this chapter which the applicant proposes to transfer.
 - (2) The location and land area of the site to which such rights are to be transferred, mapped with sufficient specificity; the location of the number of units that would result on the site from such a transfer and a statement of the character of the projected development.

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- (3) A presentation as to the reasonable and beneficial results anticipated from the authorization applied for by the applicant.
- B. If the Town Board agrees to consider the applicant's proposal, it shall proceed to request that the Planning Board evaluate the proposed transfer of development rights and prepare a report to the Town Board, upon payment of an application fee of \$250. Governmental subdivisions of the Town of Elma and the Town Board itself shall be exempt from payment of such fee, and transfers from or to the Town shall be exempt from payment of such fee.
- C. The Planning Board report to the Town Board shall consider all aspects of the proposal. Said report shall also indicate whether a generic environmental impact statement pursuant to Article 8 of the Environmental Conservation Law has been prepared for the location which is to receive the transferred development rights. In the event that none exists, a generic environmental impact statement shall be prepared by the Planning Board for said location before any such location is designated as a "receiving district" or the location from which the development rights shall be transferred is designated a "sending district."
- D. Upon receipt of the Planning Board report with any necessary attachments, the Town Board shall address the application. Said application shall be returned to the Town Board by the Planning Board within 60 days of presentation of the application to the Town Board. The Planning Board may apply to the Town Board for one and no more extension of 60 days in order to complete its work. The Town Board shall schedule a public hearing to consider the application and provide notice of said hearing. Among the factors to be considered by the Town Board and the Planning Board shall be: whether the location from which the development rights are being transferred consists of natural, scenic, recreations, agricultural, forest or open land or sites of special historical, cultural, aesthetic or economic values sought to be protected; and whether the location to which the development rights are to be transferred contains adequate resources, environmental quality and public facilities, including adequate transportation, water supply, waste disposal and fire protection and that there will be no significant environmentally damaging consequences; and such increased development is compatible with the development otherwise permitted by the Town within the receiving district.
- E. Upon favorable review of the Town Board, such an application shall be approved subject to completion of the following actions:
 - (1) Approval by the Planning Board of a detailed site development plan for the property to which the development rights are to be transferred and recommendation with regard to the disposition of property from which the development rights were transferred.
 - (2) Conservation easements.
 - (a) Execution of an instrument in the form of a conservation easement, the form and content of which shall effect such transfer and the transmittal of the fee title for the property for which the development rights to be transferred to the Town of Elma as the Town shall designate for use as open space.
 - (b) Filing copies of the executed conservation easement in the office of the Town Clerk, the Planning Board, the Building Inspector and with the Clerk of the County of Erie as a notice of such transfer incorporated in the deed of each property affected by the transfer. Such instrument shall specifically set forth the rights transferred and the resulting total development rights in each property.
 - (c) Such other requirements as the Town Board shall establish in any particular instance.

§ 144-147. General standards.

- A. The extent to which a location receiving transferred development rights may be developed in terms of its use, the intensity of said use, the land area on the site to be permitted for such use, the size of the structures on the

- § 144-147 site and/or the appropriate lot yield for the location shall be left to the discretion of the Town Board to promote the important public policy of the preservation of open space, important agricultural lands and other environmentally sensitive areas and other purposes which serve to implement the purposes of this article. § 144-147
- B. Nothing in this section shall abrogate the requirement of other codes and regulations, including the Town of Elma subdivision regulations¹¹⁵ and site plan requirements,¹¹⁶ when they are applicable.

115.Editor's Note: See Ch. 123, Subdivision of Land.

116.Editor's Note: See Ch. 117, Site Plan Review.

ARTICLE XVIII
Storage of Volatile Materials
[Added 7-21-1999]

§ 144-148. Purpose.

The Town Board, in order to balance the necessity to protect the environment with the necessity to provide for the safe storage of volatile materials, both of which affect the health, safety and quality of life of the Town of Elma and its residents, hereby enacts the following article for the storage of volatile materials. Such requirements are in addition to all federal, state and county requirements in effect now or in the future.

§ 144-149. Definitions.

As used in this article, the following terms shall have the meanings indicated:

PLANNING BOARD — The Town of Elma Planning Board.

STORAGE TANKS —

- A. Any tank used for other than farm use or heating oil.
- B. Any tank which is used for a public gasoline or a public service station is not included within this article, and all such tanks must be buried underground.

TOWN — The Town of Elma.

TOWN BOARD — The Town of Elma Town Board.

VOLATILE MATERIALS — Gasoline, kerosene, propane, diesel fuel and other flammable and/or explosive liquids or gases.

§ 144-150. Licenses and permits.

- A. License. A registration shall be required to engage in the installation, alteration or repair of aboveground or underground equipment, storage tanks, piping valves and pumps for gasoline or other volatile materials. Such registration shall be applied for and the fees shall be as required in the Peddler's Law of the ordinances of the Town of Elma.¹¹⁷
- B. Permits for storage tanks. No tank or other container for the storage and no pump or other appliance for the distribution of volatile materials shall be erected, installed and maintained within the Town of Elma without a permit being obtained from the Town of Elma and the payment of such license fees as hereinafter provided being made to the Town Clerk.

§ 144-151. Standards for all tanks.

In addition to all federal, state, county and such additional standards as the Town Board of Elma may set in an individual case, the following standards must also be met:

- A. No permit shall be issued for the placing or replacing of tanks or containers for the storage or dispensing of volatile materials within the bounds of a public highway or upon the surface thereof nor to permit arrangements for drawing therefrom from the curblin of said street.
- B. No tank for the storage or dispensing of the above-named volatile material shall be located under or on a sidewalk or under or upon or beyond a building line.

¹¹⁷Editor's Note: See Ch. 105, Peddling and Soliciting.

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- C. All storage tanks whether above or below ground shall have a fifty-foot side setback, a fifty-foot rear setback and a fifty-foot front setback. The front setback shall be from the edge of the right-of-way of any public road. In addition, all storage tanks shall be set back at least 50 feet from a main building on any side. No major repair work connected with the operation of a public garage or automobile repair shop shall be carried on outside the building, and no part of any such building shall be used for residences or sleeping quarters. Commercial storage of gasoline and other petroleum fuel for use other than by the owner of the property or business located on the site is prohibited except for public service stations.
- D. Volatile materials, except as provided in the section below, shall be stored in quantities not to exceed 12,000 gallons; tank trucks containing volatile materials may be parked on premises only when attended by the driver. A tank trailer containing volatile material shall not be disengaged from a tractor on the premises. Any transfer of volatile materials from one underground tank to another shall be by an underground piping buried at least 18 inches below grade.
- E. Propane (LP gas) must be stored above ground in tanks or containers meeting the standards contained in federal, state and county laws, rules and regulations.
- F. No tanks shall be built in an area where waterways, floodplains or wetlands may affect the tank or where a leak or spill from the tank may affect the waterway, wetland or floodplain area.
- G. Aesthetics. Insofar as is reasonably possible, all tanks shall be screened from both the road and from neighboring properties, under the procedures as directed under § 144-153 of this article.
- H. All tanks shall be adequately guarded and have such safeguards as will prevent spills from said tanks being vandalized. Such protection may consist of fences, walls or other adequate protective devices. In addition, all aboveground tanks and dikes shall be self-contained, as a single unit.

§ 144-152. Standards for storage tanks.

- A. Zoning. New aboveground storage tanks shall be allowed only in industrial zones.
- B. Zoning. New underground storage tanks shall be allowed only in industrial and commercial zones.
- C. For aboveground storage tanks, a self-contained tank and dike shall be put about said tanks such that if the entire amount which the tank is capable of storing were spilled, it would be contained within the dike.

§ 144-153. Procedure.

- A. All applications for a permit for an above- or belowground storage tank shall be made initially to the Building Inspector's office on forms provided by that office, and an application fee of \$25 shall be paid in advance to the Town Clerk's office. The application provides for minimum requirements for installation and Planning Board recommendation.
- B. Within 15 days or by the next meeting of the Planning Board, whichever is later, the Building Inspector's office shall review and recommend to the Planning Board whether such tanks should be allowed and under what conditions to comply with the standards as set forth in this article, and any other conditions or standards reasonably necessary for the health, safety and welfare of the citizens and community of Elma.
- C. Planning Board review.
 - (1) By the second meeting after receiving said recommendation from the Building Inspector's office, the Planning Board will review and recommend to the Town Board whether or not said tank will meet standards as provided by this article and under what conditions it would do so.
 - (2) Planning factors for Board review:

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- (a) Setback/side yard.
- (b) Residential screening using berm and shrubs.
- (c) Sufficient curb bumpers.
- (d) Plot plan location.
- (e) Additional safety considerations.

D. The Town Board will vote on such specifications as a special business use permit within 30 days after receipt of said recommendation from the Planning Board. NB. At every stage of these proceedings, if information is requested of the person who seeks the permit, the time from the point where such information is requested to the time it is provided shall not be considered as counting against the time within which the various departments and boards must render a decision.

§ 144-154. Penalties for offenses.

Any persons violating any provision of this article shall be liable for a fine not to exceed \$250 for each violation and a sentence of incarceration of no more than 15 days for each violation, or both. When a violation exists, then each day the violation exists shall be considered a separate violation.

§ 144-155. Exceptions.

The following are exceptions to the provisions of this article:

- A. There is an exception for emergency services vehicles as listed in the Town of Elma Disaster Preparation Book as set forth in this subsection of up to 2,500 gallons which they may have as an exception to this article. The permit fee, however, is waived.
- B. Farmers who may store up to 1,100 gallons above ground.
- C. The provisions hereof shall not apply to installations "grandfathered" (in operation prior to the effective date hereof), except that the provisions of this article shall apply to all replacement of tanks and equipment and all additional tanks installed on premises where tanks currently exist.
- D. Home heating oil in residential areas.

§ 144-156. When effective; time for compliance.

Such article shall be effective immediately after passage by the Town Board, and each applicant shall have 180 days thereafter to comply.

Disposition List

Chapter DL

DISPOSITION LIST

§ 144-156

§ DL-1

The following is a chronological listing of legislation of the Town of Elma adopted since January 1, 2006, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] The last legislation reviewed for the 2016 republication of the Code was L.L. No. 4-2015, adopted 12-16-2015. Consult municipal records for information regarding prior legislation not on this list.

§ DL-1. Disposition of legislation.

Enactment	Adoption Date	Subject	Disposition
L.L. No. 1-2006	5-3-2006	Sex offenders: residency restrictions	Superseded by L.L. No. 2-2017
L.L. No. 2-2006	7-19-2006	Assessments: Office of Receiver of Taxes abolished	Ch. 3, Art. I
	8-16-2006	Electrical standards amendment	Ch. 71
L.L. No. 1-2007	4-18-2007	Moratorium on land use approvals	NCM
L.L. No. 2-2007	12-19-2007	Officers and employees: residency requirements	Ch. 24, Art. I
L.L. No. 3-2007	12-19-2007	Sewers amendment	Ch. 115
L.L. No. 4-2007	12-19-2007	Building construction amendment; flood damage prevention amendment; site plan review amendment; stormwater management; subdivision of land amendment	Repealed by L.L. No. 2-2015
L.L. No. 1-2008	1-2-2008	Stormwater Management Overlay District	Ch. 120A
L.L. No. 2-2008	2-13-2008	Vehicles and traffic: vehicle weight limits on Town roads	Ch. 134, Art. II
L.L. No. 3-2008	3-19-2008	Taxation: Cold War veterans tax exemption	Ch. 127, Art. V
L.L. No. 4-2008	4-16-2008	Moratorium on land use approvals	NCM
L.L. No. 5-2008	10-1-2008	Zoning amendment	Ch. 144
	9-3-2008	Vehicles and traffic: parking amendment	Ch. 134, Art. I
	5-6-2009	Water amendment	Ch. 140
L.L. No. 1-2009	6-3-2009	Moratorium on land use approvals	NCM
	8-19-2009	Personnel policies: workplace violence prevention	Ch. 27, Art. I
	2-10-2010	Residential 280-A development	Repealed 8-20-2014
	6-16-2010	Residential 280-A development amendment	Repealed 8-20-2014

§ DL-1 Enactment	Adoption Date	Subject	Disposition	§ DL-1
	7-21-2010	Residential 280-A development amendment	Repealed 8-20-2014	
L.L. No. 1-2010	8-18-2010	Retirement incentive program	NCM	
L.L. No. 2-2010		Amending zoning for temporary storage units	Tabled 8-18-2010	
L.L. No. 3-2010	11-17-2010	Dogs amendment	Ch. 65	
	7-20-2011	Filling and grading amendment	Ch. 77	
L.L. No. 1-2011	8-17-2011	Taxation: conservation easement agreement exemption	Ch. 127, Art. VI	
	10-19-2011	Zoning amendment	Ch. 144	
L.L. No. 1-2012	11-7-2012	Building construction amendment; flood damage prevention amendment; site plan review amendment; stormwater management amendment; subdivision of land amendment	Repealed by L.L. No. 2-2015	
L.L. No. 1-2013	1-23-2013	Moratorium on multifamily dwellings	NCM	
L.L. No. 2-2013	7-17-2013	Historic preservation	Ch. 87	
	8-21-2013	Filling and grading amendment	Ch. 77	
L.L. No. 1-2014	2-12-2014	Moratorium on multifamily dwellings	NCM	
L.L. No. 2-2014	6-18-2014	Dogs amendment	Ch. 65	
L.L. No. 3-2014	6-18-2014	Moratorium on multifamily dwellings	NCM	
	8-20-2014	Residential 280-A development repealer	Repealer only	
L.L. No. 4-2014	9-3-2014	Police Department	Ch. 31	
L.L. No. 1-2015	2-4-2015	Zoning amendment	Ch. 144	
L.L. No. 2-2015	4-15-2015	Building construction amendment; site plan review amendment; stormwater management; subdivision of land amendment	Ch. 52; Ch. 117; Ch. 120; Ch. 123	
L.L. No. 3-2015	5-20-2015	Assessments: grievance day	Ch. 3, Art. II	
L.L. No. 4-2015	12-16-2015	Planning Board: appointment of secretary	Ch. 29, Art. III	
L.L. No. 1-2016	1-20-2016	Moratorium (subdivisions)	NCM	
L.L. No. 2-2016	11-16-2016	Tax levy limit override	NCM	
L.L. No. 3-2016	11-16-2016	Moratorium (solar farms)	NCM	
L.L. No. 4-2016	12-7-2016	Moratorium (subdivisions)	NCM	

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L.L. No. 5-2016	12-7-2016	Historic preservation amendment	Ch. 87
L.L. No. 1-2017	1-18-2017	Biosolids: siting of facilities; aerobic digestion	Ch. 50, Art. I
L.L. No. 2-2017	4-19-2017	Sex offenders: residency restrictions	Ch. 116, Art. I
L.L. No. 3-2017	6-14-2017	Subdivision of land amendment	Ch. 123
L.L. No. 4-2017	12-20-2017	Moratorium on Solar Farms	NCM
L.L. No. 1-2018	2-14-2018	Taxation: Cold War Veterans Tax Exemption Amendment	Ch. 127, Art. V
L.L. No. 2-2018	3-21-2018	Biosolids: Siting of Facilities; Aerobic Digestion Amendment	Ch. 50, Art. I
	5-9-2018	Flood Damage Prevention Amendment	Superseded by L.L. No. 1-2019
	7-18-2018	Social Host Liability	Ch. 118
	12-19-2018	Parks: Additional Regulations Amendment	Ch. 103, Art. II
	12-19-2018	Social Host Liability Amendment	Ch. 118
L.L. No. 1-2019	4-17-2019	Flood Damage Prevention	Ch. 82
L.L. No. 2-2019	5-22-2019	Solar Renewable Energy Systems	Ch. 118A

Enactment	Adoption Date	Subject	Disposition	Supp. No.
	12-19-2018	Water Amendment	Ch. 140	4
	10-23-2019	Water Amendment	Ch. 140	4
L.L. No. 1-2021	10-20-2021	Cannabis: Cannabis Retail Dispensary and On-Site Consumption Establishment Opt-Out	Ch. 57, Art. I	5
	6-15-2022	Zoning Amendment	Ch. 144	5
L.L. No. 1-2023	2-22-2023	Building Construction: Administration and Enforcement	Ch. 52, Art. II	5

